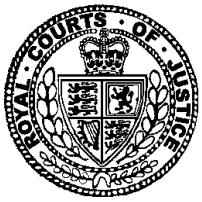

Neutral Citation Number: [2021] EWHC 2609 (Comm)

Case No: CL-2018-000701

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/09/2021

Before :

SIR ROSS CRANSTON
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

(1) ABDULRAHMAN BIN ABDULLAH BIN IBRAHIM AL-SUBAIHI **(2) JAMAL ABDULLAH AL-MUZEIN**	**Claimants**
- and -	
MISHAL MAAN AL-SANEA	**Defendant**

- -
- -

RUPERT D'CRUZ QC and ALEXANDER HALBAN (instructed by **DENTONS UK and Middle East LLP**) for the **Claimants**
JAMES ALDRIDGE QC and DUNCAN MCCOMBE (instructed by **HARBOTTLE & LEWIS LLP**) for the **Defendant**

Hearing dates: 12-16, 19-20 and 23 July 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

SIR ROSS CRANSTON SITTING AS A JUDGE OF THE HIGH COURT

"Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 29 September 2021 at 10:30"

SIR ROSS CRANSTON :

I INTRODUCTION

1. In these proceedings the claimants, Dr Al-Subaihi and Mr Jamal Al-Muzein seek payment of debts arising under a Final Clearance Agreement ("FCA") dated 29 November 2017 signed by the defendant, Mr Mishal Al-Sanea. Under the agreement Mr Mishal Al-Sanea agreed to settle legal fees owed to the claimants, US$13,734,400 owed to Dr Al-Subaihi and US$2,265,600 owed to Mr Jamal Al-Muzein. Mr Mishal Al-Sanea has failed to make any payment to the claimants under the FCA. The defence contends that the FCA is of no effect because it was procured in breach of fiduciary duties. The defence also invokes duress, undue influence and unconscionability, as well as the terms of the agreement itself. The parties proceeded on the basis that matters were governed by English law.

2. Following the openings, which were conducted online, I heard evidence in court over some six days from the first claimant, Dr Al-Subaihi and the defendant, Mr Mishal Al-Sanea. There were then online closing submissions. Following the hearing the Supreme Court handed down its judgment in Pakistan International Airline Corp v Times Travel (UK) Ltd [2021] UKSC 40. That resulted in further written submissions by both sides in early September.

The evidence

3. For the hearing there were witness statements from the first claimant, Dr Al-Subaihi, and the defendant, Mr Mishal Al-Sanea. There was no witness statement from the second claimant, Mr Jamal Al-Muzein. He was detained in July 2020 in the Kingdom of Saudi Arabia ("KSA" or "the Kingdom") and is still in custody. There was a witness statement from his daughter, Ms Sheikha Al-Muzein, who is a lawyer with his law firm in Al Khobar. She explained that the conditions of his detention have made it impossible for him to provide a witness statement. It appears that the second claimant is charged with offences under anti-bribery regulations.

4. Before the court were many WhatsApp messages and transcribed voice messages taken from the claimants' and the defendant's mobile telephones. At closing Mr Aldridge QC helpfully brought order to the WhatsApp messages so that they were in one bundle, albeit of over 700 pages. In keeping with the cultural norms explained to me the messages between the claimants and the defendant were always polite and respectful, although some of those between the claimants themselves were critical about the defendant and his family because of their failure over a number of years to pay the claimants' legal fees. Documents were also available, sometime having been transmitted by WhatsApp, as well as email.

5. It seems that the messages and documents were translated from Arabic into English for both parties through an organisation called Transperfect. There were differences between the parties as to the accuracy of some of the translations, although in most cases there was ultimately an agreed version before the court. The witnesses sometimes gave what they said were more accurate translations in the witness box.

6. Disclosure by the second claimant was unsatisfactory: see Cockerill J's judgment in Al-Subaihi v Al-Sanea [2020] EWHC 3206 (Comm). There was also late disclosure by the

first claimant (two weeks before trial) of some important messages. TransPerfect has confirmed that he did not withhold anything from them. At closing I was provided with an explanation of how the claimants' solicitors, Dentons, conducted the disclosure process. I regard it as satisfactory. Notwithstanding continued criticism by the defendant about certain "media files" (as they were described) which were not available, my view is that is highly unlikely that the defendant's case would be advanced by any further material.

7. Overall, I have concluded that Dr Al-Subaihi gave credible evidence, which was consistent with the contemporaneous documentation and messages which I describe later in the judgment. That does not mean everything he said is to be accepted. He was voluble and sometimes emotional and convoluted in his replies. On occasions he obfuscated, as when he sought to underplay matters such as the enmity built up about the defendant and his father, and later his satisfaction as things went wrong for the family when they failed to follow his advice. However, none of this went to the central issues of the case.

8. By contrast with Dr Al-Subaihi, Mr Mishal Al-Sanea's oral evidence was calm, short and to the point. In his oral evidence he frankly resiled from what he had said in his witness statements and Amended Defence as regards notable aspects of his case. There are contradictions with his earlier witness statements and Amended Defence, and also between these, none of which assisted his case. Moreover, what he said was also in important respects contradicted by the written documentation and messages. At several points he said that he had always prioritised protecting his father's interests. That is the commendable motivation of a devoted son, but it led to evidence which I could not regard as credible.

9. Mr Mishal Al-Sanea readily accepted that over several years he had deceived the claimants, often with elaborate fabrication. The intention, he readily accepted, was to have them believe that they would be paid so that they would continue their work in protecting his family's and their business interests. He frankly accepted that he had no intention that they would be paid. His obvious competence and professionalism support the conclusion, which I explain below, that he was not unlawfully pressured or threatened by the claimants into signing the FCA, or the promissory notes which preceded it.

II FACTUAL BACKGROUND

The parties

Dr Al-Subaihi

10. The first claimant, Dr Al-Subaihi, is a lawyer qualified in KSA who holds a master's degree in criminal law from Naif University, Riyadh, and a PhD in international commercial arbitration from the University of Birmingham. Among his appointments he has been a professor at the High Judiciary Institute in the Kingdom and at the law faculty at Dar Al Uloom University (Riyadh) and a member of the board of the Saudi Judicial Association. He oversaw the formation of the Kingdom's Credit Information Law and was part of the legal team that developed its real estate financing law. In his evidence he said that he had friends in high places in the Kingdom. His clients included

its Ministry of Defence; the Saudi Central Bank; the Saudi Credit Information Company; and the Saudi Kayan Petrochemical Company, as well as prominent families.

11. Dr Al-Subaihi worked as a lawyer for the defendant's father, the family (including the defendant) and their businesses between 2009 and 2017 in circumstance explained later in the judgment. As a result of the events examined in the judgment, he has had to close his legal practice.

Mr Jamal Al-Muzein

12. The second claimant, Mr Jamal Al-Muzein, is also a lawyer in the KSA. His firm is Jamal A. Al Muzein Advocates & Legal Consultants Office. One of the lawyers at his firm is Abdullah Al Darweesh.

13. Prior to setting up his practice in 2003, Mr Jamal Al-Muzein was a lawyer for the defendant's father, Mr Al-Sanea Snr and his companies in the Saad Group. From 1994 to 2000 he was in-house counsel for the main holding company within the group, Saad Trading Contracting & Financial Services Co. ("Saad Trading") and from 2000 until 2003 worked on a part-time basis for Saad Trading. He was a member of the Shura Council, appointed by the King, which has power to propose laws for the Kingdom. On Mr Mishal Al-Sanea's evidence, he moved in the same social and professional circles as the chief judge of the JDEK court, described below, which began to handle the claims against the defendant's father and the Saad Group.

14. Mr Jamal Al-Muzein worked for the Al-Sanea family, the Saad Group, and the Saad Hospital, alongside Dr Al Subaihi. The claimants' retainer ceased in July 2017, as explained later in the judgment.

Mr Maan Al-Sanea (Mr Al-Sanea Snr) and the Saad Group

15. The defendant, Mr Mishal Al-Sanea, is the son of Mr Maan Al-Sanea, whom I call Mr Al-Sanea Snr in the judgment. Mr Al-Sanea Snr was an extremely successful businessman and in 2008 was ranked by Forbes magazine as the 62nd richest man in the world. His wealth was based on the Saad Group, which he founded in the 1970s and was based in Al Khobar in the Kingdom. The businesses of the Saad Group operated in the KSA and abroad in construction, engineering and building, as well as real estate development, financial services, investment, education and healthcare. They were in Bahrain, the United Arab Emirates, London, Geneva, Dubai, and the Cayman Islands. The 1200-bed Saad Hospital, with its independent nurse training college, is in Al Khobar. The shareholders were Mr Al-Sanea Snr's wife and children.

16. As a result of the global financial crisis in 2008, the companies within the Saad Group defaulted on huge dollar loans and faced claims in the billions of dollars by more than 30 banks in the Kingdom and other jurisdictions. From 2016 the claims by creditors against the Saad Group and the family were handled by the Joint Enforcement Department at the General Court in Al Khobar ("JDEK"). JDEK is a civil enforcement court of three judges formed because the general civil enforcement court in Al Khobar at the time did not have sufficient capacity. Its aim was to ensure that as many creditors were paid as possible as part of a liquidation process.

17. Among its powers JDEK could impose freezing orders, travel bans and detention orders for individuals requiring debts to be paid before the debtor was released. It seems that any judgment placed before JDEK for enforcement could result in an order that the respondent pay the debt in five days, failing which these powers could be exercised. In addition, JDEK could arrange for the public prosecution to conduct investigations and interviews. JDEK did this when it became concerned that all the assets of Saad Trading, Mr Al-Sanea Snr and those associated with him had not been disclosed.

18. From 2009 there was a freezing order in relation to Mr Al-Sanea Snr and he was subject to a travel ban. There were a significant number of judgments against him and Saad Trading which proceeded to enforcement and which he failed to satisfy. However, he was not imprisoned until after the claimants stopped representing him in July 2017. In October 2017 he was detained in relation to unpaid debts. He remains detained. His eldest son, Abdulaziz, was also detained, but was released in December 2017 on compassionate grounds. The family was also subject to travel bans, which remain in place.

Mr Mishal Al-Sanea

19. In his first witness statement, Mr Mishal Al-Sanea explained that he was a Saudi National with Saudi and Bahraini passports. He was a student at universities in London between 2006 and 2012. He had been in the UK since 2017, because he was subject to a travel ban imposed by the KSA from that time. In 2009 he had met his wife, a Saudi national, also a student in London who remained in the UK after graduating in 2014 and thereafter completed her legal training. They were married in Riyadh on 4 April 2017 in celebrations to which we return.

20. In that witness statement Mr Mishal Al-Sanea said that on his return to KSA, from 2013 he became involved in the family business. From 2015, he told me, he was being groomed to be part of the senior management team of Saad Trading. This involved frequent travel, common for those conducting business internationally. In his third witness statement and in his oral evidence, he explained his leading role in the Saad Group and the Saad Hospital. That meant he was involved in handling the many legal claims involving the group. This involved liaising with Saad's inhouse counsel, who occupied an entire floor at the head office (some 30 lawyers), as well as with the claimants. Mr Mishal Al-Sanea's evidence was that his style was to negotiate as hard as possible.

21. In 2015 the articles of association of the Saad Hospital were amended to remove Mr Al-Sanea Snr as director and manager and to appoint Mr Mishal Al-Sanea and his brother in their father's place. In that capacity Mr Mishal Al-Sanea dealt with government issues, commercial dealings and negotiations with insurance companies. In his position he could sign most documents. Sometimes his father acted as the hospital's agent. On his evidence the Saad Hospital was stronger financially than the companies in the Saad Group and had fewer legal issues.

22. Mr Mishal Al-Sanea's evidence was that he was also the director of property management and advertising start-ups in the UK and the KSA.

23. Mr Mishal Al-Sanea's evidence was that Mr Jamal Al-Muzein was closer to the family than Dr Al-Subaihi and would attend family celebrations and social events. He was

"almost family". As well as his role with the businesses, he was his father's personal lawyer. He also acted for Mr Mishal Al-Sanea himself in his personal business matters and over the years he had formed a personal "uncle" type relationship. Mr Mishal Al-Sanea's evidence was that his trust in Dr Al Subaihi grew over the years, as they worked on more matters together. Later we see how that trust with both claimants broke down. On his evidence which was not disputed, both claimants showed considerable deference to his father.

Mr Mishal Al-Sanea's wide powers of attorney

24. There were three powers of attorney, revealed in the evidence, recognising Mr Mishal Al-Sanea's wide powers in relation to the conduct of the affairs of Saad Trading and the Saad Group, in particular the litigation in which they and his family were engaged. All Mr Mishal Al-Sanea had said in his third witness statement was that he had a limited power of attorney. That was not the case. It is difficult not to draw the conclusion that the omission of this material from his witness statement was deliberate since it was inconsistent with his case of vulnerability to the pressure and threats of the claimants.

25. These three powers of attorney dated September 2015 conferred wide powers for the defendant (i) to carry out management activity for Saad Trading and the Saad Hospital; (ii) to manage litigation for the family (that was under powers of attorney Mr Al-Sanea Snr had in turn been given by other family members); and (iii) to manage litigation for Saad Trading and Saad Hospital.

Fee agreements with claimants 2010, 2013

26. There were several "attorney fee agreements" (retainer agreements) relating to the work the claimants undertook for Mr Al-Sanea Snr, the Saad businesses and the Al-Sanea family.

27. An early agreement, dated May 2010, was between Dr Al-Subaihi and Mr Al-Sanea Snr in his personal capacity and as managing director and chairman of the board of the Saad Group "and in any other capacity he may have". Under it Dr Al-Subaihi was engaged to defend and represent Mr Al-Sanea Snr in 15 named claims against him brought by banks in the Banking Disputes Resolution Committee ("BDRC"), including well known international banks such as Citibank NA, Fortis Bank SA and Bank BNP Paribas. Under clause 2.1 Dr Al-Subaihi was to receive a total advance payment of SAR 22,500,000 (c. £4.31 million) and under clause 2.2 an additional SAR 1,000,000 per case (c. £191,900 per case) if a case was finally dismissed.

28. A further agreement dated in March 2013 retained Dr Al-Subaihi to defend and represent Mr Al-Sanea Snr (acting in a personal and representative capacity) before the BDRC, specifically in relation to ten further cases. Under clause 2.1 Dr Al-Subaihi was to receive SAR 12,000,000 (c. £2.3 million); under clause 2.2, SAR 1,000,000 per month (c.£191,900 per month) for the period during which the cases were under consideration or appeal; and under clause 2.3, an additional SAR 1,000,000 (c.£191,900) on the determination of each case.

Work undertaken for Saad businesses and Al-Sanea family

29. Pursuant to their retainer the claimants provided substantial legal services to the Mr Al-Sanea Snr, his businesses and the Al-Sanea family in relation to the many claims arising from the collapse of the Saad Group. In June 2014 there was a statement prepared for the Execution Judge of the Al Khobar General Court listing 38 legal proceedings totalling USD 3.6 billion instituted by banks against the businesses in the BDRC. That was before the establishment of JDEK.

30. In his witness statement Dr Al-Subaihi explains that the work involved analysing thousands of pages of loan agreements; reviewing financial records (in conjunction with the Saad Group's accounting team); devising strategies for negotiating a reduction of debts owed to these banks and engaging in meetings with them about this and also with regulatory and investigatory authorities; drafting legal opinions and other papers and generally advising; dealing with correspondence; and representing Mr Al-Sanea Snr and his companies in numerous forums and before a multitude of bodies in the KSA, including the BDRC, the JDEK, the Capital Market Authority, the Sharia Court, the Emirate of the Eastern Province and even the King. These hearings and committee meetings occurred at least once, and sometimes twice, a week.

31. Dr Al-Subaihi stated that this work became all-consuming. Consequently, in the eight-year period from 2009 to 2017 with few exceptions he was unable to work for other clients and spent his entire time representing the Saad businesses and the Al-Sanea family. Dr Al-Subaihi explained that he was able to achieve the main instruction which he was given when first engaged by Mr Al-Sanea Snr, to delay matters for two to three years so that settlements could be negotiated with the banks. Matters were in fact delayed for five to six years in most cases. Further, Mr Al-Sanea Snr was not detained during the time of the claimants' retainer.

Arrears of fees and the Defendant's responsibility

32. The history of the claimants' retainer with Mr Al-Sanea Snr and the Saad family and businesses was a history of arrears in the payment of their fees. By April 2014 some SAR 32,050,000 (c.£6.1 million) was outstanding. Between May 2011 and April 2014, Mr Al-Sanea Snr was requested on a regular basis to settle the claimants' fees. In some of the letters Dr Al-Subaihi explained that he was incurring substantial expenses in undertaking work under the retainers. In a letter to Mr Al-Sanea Snr in April 2014, Dr Al-Subaihi wrote that he was left with no alternative but to warn that he would cease work if his fees were not paid. However, the claimants continued with further work which incurred more fees, which again went unpaid.

33. In his third witness statement Mr Mishal Al-Sanea said that as regards the period January 2016-February 2017 the claimants' fees were not his problem, rather his father's, and he did not have detailed knowledge of them despite the claimants regularly chasing him for payment. In his oral evidence, however, he accepted that he was responsible for handling the claimants, including payment of their fees. As he put it at one point in his evidence:

> "[T]he claimants were a small file on my father's desk at the time, and he asked me to relieve him and report back."

The Chamber of Commerce letter September 2015

34. On 13 April 2015 the defendant, Mr Mishal Al-Sanea signed a letter under the seal of Saad Trading, addressed to Dr Al-Subaihi which was authenticated by the Chamber of Commerce and Industry for the Eastern Region of the KSA. In the letter Mr Mishal Al-Sanea stated his gratitude to Dr Al-Subaihi for the work done, explained the financial crisis being experienced, and expressed the hope that Dr Al-Subaihi would give until the beginning of the next year "to fulfil our financial obligations to you". The letter continued:

> "We confirm to you that we owe you a sum of SAR 50 million…as per the schedule that we will complete with you soon, in attorneys' fees to date, and we pledge to pay it to you as soon as possible."

35. In his witness statement, Mr Mishal Al-Sanea said that it was the first time that Dr Al-Subaihi had abused his position and subjected him to improper pressure to induce him to sign the letter. In his oral evidence he gave several contradictory answers as to whether he had drafted the letter and whether he signed it voluntarily. His final explanation was that if he did draft it, he did so to appease Dr Al-Subaihi. In my view there is no convincing evidence of improper pressure and threats being exercised over him in this regard.

The October 2016 agreement

36. There was a further attorney fee agreement dated October 2016 ("the October 2016 agreement"). Drafts of the agreement passed between Mr Al-Sanea Snr and Mr Jamal Al-Muzein. The defendant (but not other members of the family) was copied into the messages passing between his father and Mr Jamal Al-Muzein. An early version of the agreement contained as clause 3 that it would be cancelled if the claimants stopped acting. This was the version of the agreement referred to in the defendant's third witness statement. However, that clause was not in the final version, signed on 3 October 2016.

37. The final version of the October 2016 agreement was between (in the order set out in the document) (i) the second claimant; (ii) the first claimant (both described as "the First Party"); (iii) Saad Trading and 18 other named companies in the Saad Group; (iv) Mr Al-Sanea Snr on his own behalf and in his capacity as partner in Saad Trading and the other 18 companies; (v) his wife in her capacity as partner in Saad Trading and the other 18 companies; and (vi) six named children, including Mr Mishal Al-Sanea, the defendant, "in their capacity as partners" in Saad Trading and the 18 named companies (all of whom are referred to as "the Second Party").

38. The agreement was signed by the claimants for the First Party and by Mr Al-Sanea Snr for the Second Party.

39. I accept Mr Aldridge QC's submission that Mr Mishal Al-Sanea was not a party to the agreement in his personal capacity. That is evident in the contrast between how as parties he and his father were described in the agreement. Therefore Mr Mishal Al-Sanea was not personally liable under the October 2016 agreement for the fees recorded there.

40. Under the agreement the claimants were to represent Mr Al-Sanea Snr, his wife exclusively in her capacity as regards the Saad Group as partner, and the companies in

the cases filed against them before JDEK, and to follow up on judgments against them and to appeal them to other judicial bodies.

41. Clause 3 was entitled "Fees". Under it the claimants were entitled to SAR 30,000,000 (c. £5.75 million) in seven instalments, concluding on 3 March 2018. Apart from the first instalment, on the date each instalment was due,

> "the Second Party shall submit a promissory note to the First Party drawn on Saad Trading Contracting and Financial Services Company, and guarantor shall be the Saad Specialist Hospital in the amount of this payment…"

42. Clause 3 also provided for a commission of 2% of any debt reduction which the claimants were able to negotiate with the bank, and 10% of any sums collected from those banks under claims to be issued against them by the Second Party. Fees were exclusive of disbursements.

Defendant as point of contact for claimants for fees

43. Clause 7 of the October 2016 agreement provided that communications between the First and Second parties should be through:

> "1. The Second Party: Mr Maan Al-Sanea and Mr Mishal Al-Sanea directly,
>
> 2. The First Party: Mr Jamal Abdullah Al-Muzein or through Attorney Abdullah Al-Darwish (sic)."

44. In his third witness statement Mr Mishal Al-Sanea had given the evidence referred to earlier of relative non-involvement at this time with the claimants and their fees. He did not mention that he was the designated point of contact on these matters, as is evident by clause 7. His explanation was that it did not occur to him to do so. He resiled from this position at the hearing with his evidence that his father had designated him to deal with the claimants and their fees and his acceptance that under the October 2016 agreement the claimants were entitled, legally obliged in fact, to approach him or his father about their fees.

45. In my judgment his omission of this from his witness statement was misleading when his case was that somehow the claimants were pressing and threatening him as a type of soft target on matters which were not, in the main, his concern.

The father's promissory notes dated 3 October 2016

46. As we have just seen the October 2016 agreement contemplated the issue of promissory notes for six of the seven instalments payable under it.

47. On 3 October 2016 Mr Al-Sanea Snr signed promissory notes on behalf of Saad Trading and the Saad Hospital. Dr Al-Subaihi saw that his signature on the notes was not his true signature. His evidence was that he was aware from cases which he had handled that Mr Al-Sanea Snr had done this in the past to avoid liability by claiming that he had not signed the documents at issue. Moreover, by then Mr Al-Sanea Snr was not part of

the management of Saad Hospital. Dr Al-Subaihi's evidence was that he immediately raised these concerns with the defendant, Mr Mishal Al-Sanea, who promised to arrange for enforceable promissory notes. In his evidence Mr Mishal Al-Sanea accepted this.

48. Consequently, Mr Jamal Al-Muzein's law firm prepared revised versions of the promissory notes in identical terms to those signed by Mr Al-Sanea Snr although the signatory on Saad Trading's and Saad Hospital's behalf was now identified as the defendant, Mr Mishal Al-Sanea, in his capacity as manager and director of both Saad Trading and Saad Hospital.

Claimants' power of attorney, November 2016

49. Clause 2 of the October 2016 agreement set out the legal work contemplated under it and provided for a power of attorney to be executed so that the claimants could perform the relevant tasks.

50. As contemplated by the agreement, a power of attorney was executed, dated 1 November 2016, under which Mr Mishal Al-Sanea in his own capacity and as director-general of the Saad Hospital conferred very wide powers on the claimants to act in court.

Demands for payment, threats and pressure October 2016-April 2017

51. During this period the claimants made regular demands for payment of their outstanding fees, promises were made, but their fees were not paid. In private messages between themselves the claimants described the family in unflattering terms. The claimants became wary of the family and cautioned each other to be careful. There were a few warnings between them not to make voice calls on mobile telephones because of the fear, in part, that the calls with Mr Mishal Al-Sanea would be recorded. Despite Mr Aldridge's suggestion, I do not regard these warnings as indicating an intention to conduct the "bad stuff off-line" (as he put it) and that there is material relevant to the defence which has been concealed. As indicated, there is a wealth of interchanges between the claimants on WhatsApp where they are open about their views, intentions, and actions.

52. The claimants agreed various strategies on how to obtain payment of their fees. For example, on 28 February 2017 Dr Al-Subaihi messaged Mr Jamal Al-Muzein (in the defendant's translation) about getting Mr Mishal Al-Sanea to guarantee his father's debts, or informing the authorities that they were no longer representing the family and businesses:

> "Regarding their matter they are people that can only be dealt with by an old shoe. God dignify you. We have two options. First: You talk to [Mr Mishal Al-Sanea] and tell him that you must guarantee your father as we do not trust him anymore. Second: You accept, after exerting pressure, that [Mr Abdullah Al Darweesh] goes, and if he comes back, he should not talk to [Mr Mishal Al-Sanea] and you exaggerate the hearing as you like, and Abdullah requests delay to next week because I am sick, and I am sick I swear, and tells them, [Dr] Al Subaihi will come

> on Monday and you have to finish with him otherwise he will go to the committee and inform them that we stopped... And as I told you, it is up to you... The problem is that you are in Mecca and your devil cannot come with you [3x smiley face emoji]."

53. In cross-examination Dr Al Subaihi did not adequately explain the allusion to the devil, except to say that after six years of non-payment he was entitled to be angry, although in relation to the devil being invoked on another occasion he conceded that it meant someone's evil side. In the absence of further cultural and religious evidence I do not consider it possible to take these references to the devil further, in particular to draw some of the adverse inferences which Mr Aldridge canvassed about acting in bad faith.

54. The claimants also threatened to cease acting as legal representatives if they were not paid, although in practice they continued to provide legal services to the Saad family and businesses until the termination of the retainer in July 2017. They warned of what JDEK might do, such as the imposition of travel bans. On 13 February 2017 there is an interchange when, in the context of an intention to inform the authorities that they were no longer representing the family and the Saad businesses, Mr Jamal Al-Muzein told Dr Al-Subaihi that "we should let him [Mr Mishal Al-Sanea] fear us."

55. There was talk between the two claimants of them exerting pressure on Mr Mishal Al-Sanea. Dr Al Subaihi said in oral evidence that he was under definite pressure himself from his own creditors and would do anything in his power to secure his rights to payment. Regarding the pressure the claimants exerted, for example, in a WhatsApp message on 21 March 2017 Dr Al-Subaihi referred to applying

> "pressure, and pressure and more pressure"

in the context of Mr Jamal Al-Muzein telling him that he had, in turn, told Mr Mishal Al-Sanea that he should not talk to him until he paid the outstanding fees. On 4 April 2017, the day before Mr Mishal Al-Sanea signed the promissory notes, Dr Al-Subaihi suggested that Mr Jamal Al-Muzein - with whom Mr Mishal Al-Sanea felt more comfortable because of the long association with the family - should contact him and "put pressure on him to sign."

56. Mr Mishal Al-Sanea was asked in cross examination about what he had said in his witness statement about the pressure from the claimants warning that they would not to act if they were not paid, and that this would have dire consequences for his family and his father's companies. He accepted that the claimants were entitled to cease acting if they were not paid. His complaint was that they gave their warnings at the worst of times:

> "Q. Let's just take that in turn. The pressure you're referring to here is, in essence, the claimants asking for payment of overdue fees and saying they would stop acting if they were not paid, isn't it; yes?
>
> A. Yes.

> Q. As far as you're concerned, was it wrong for them, then, to warn you that they would not continue to act for your family if they were not paid?
>
> A. The times that they warned me were always a day or two before a hearing or some…some matter related to JDEK.
>
> Q. Yes, but they always continued to act. If, as you say they were making these comments to you shortly before a hearing, nevertheless they did in this period attend those hearings, didn't they?
>
> A. They did.
>
> Q. Yes. So, it wasn't a threat, it was an exasperation on their part that they were being expected to undertake more and more work, and particularly when it comes to a hearing, can you understand why that exasperation would be at its height, and saying: if this continues, we cannot continue to act for you; that was what was happening, wasn't it?
>
> A. I can understand that."

57. In several parts of his cross-examination, Mr Mishal Al-Sanea acknowledged that it was inevitable that JDEK would draw adverse inferences if the claimants ceased acting, and that this did not mean that they had to continue working without payment indefinitely. Mr Mishal Al-Sanea also accepted in his oral evidence that Dr Al-Subaihi gave separate warnings about the asset freezes, travel bans and criminal charges which could result from the JDEK proceedings and the public prosecution investigation which JDEK had initiated. He accepted that these risks were known about before Dr Al-Subaihi gave a more detailed account in mid-March 2017. In relation to the briefings Dr Al-Subaihi gave him on these matters and the consequences of the continued non-payment of fees, Mr Mishal Al-Sanea said: "The way I remember it, the 'cease to act' came second to the updates he was giving me."

The February 2017 letter

58. One such warning about the consequences of the claimants' fees not being paid was given on 7 February 2017, when Mr Jamal Al-Muzein sent a letter to Mr Mishal Al-Sanea which was to be sent on to his father. The letter was described as "Notice to cease to represent you before the Joint Execution Circuit [JDEK]." It referred to a previous notice of 9 February about what was owed. The letter added:

> "I do hereby inform of my full ceasing to follow up with the Joint Execution Circuit. I will notify the Circuit of this letter. I will discharge my responsibilities with the consequences of ceasing, however claiming our fees agreed upon continues."

59. In a mobile telephone voice message to Mr Mishal Al-Sanea, Mr Jamal Al-Muzein explained that a cheque which was supposed to have been sent in payment of the claimants' fees had not arrived. Mr Jamal Al-Muzein added:

> "The usual procrastination we always deal with… I beg you to end the matter, which is that we have to use the same method when it comes to your work. We could very easily use the same method...Regardless of a report, regardless of anything, forget the matter. Whether you pay or you don't pay, treatment will be proper."

60. In cross-examination Mr Mishal Al-Sanea was asked about the letter:

> "Q. So, he wasn't leaving you. He wasn't pushing you into is a corner (sic), and saying: look, there is a hearing tomorrow. There are dire consequences if you're not represented. Pay up or else. On the contrary, he was saying: look, I have no choice, but to do this if this fee situation isn't sorted out; I have prepared a letter which I will send to your father, but here is another opportunity for you to sort it out, so that we can continue acting for your father. That's what he was doing, wasn't it?
>
> A. He could have sent it to my father. He chose to send it to me, so he wanted me to see if I can push my father to get payment.
>
> Q. Yes, and you were one of the designated people, as we have seen under the October 2016 agreement, designated to speak to him about this issue. So, he's perfectly entitled, legally obliged, in fact, to approach you or your father, but you on this issue, wasn't he?
>
> A. Yes."

The 2 April 2017 "threat"

61. Another occasion of a warning was on 2 April 2017, when Dr Al-Subaihi sent a WhatsApp message to Mr Mishal Al-Sanea:

> "Things will get worse due to the non-payment and settlement of issues. Don't blame us. Delay is not in your interest."

62. In a letter dated 3 April 2017 to Dr Al-Subaihi, Mr Al-Sanea Snr regretted what he described as the "threats" which the claimants were making. The same day Dr Al-Subaihi sent the father's letter by WhatsApp to Mr Mishal Al-Sanea, who replied that he knew nothing about the letter, that he had been in Riyadh since Sunday for his wedding, and that he had told his father "that things will get worse due to the non-payment, we have a big payment problem with the [Kuwait] Finance House…"

63. Dr Al-Subaihi then messaged Mr Mishal Al-Sanea that he was not threatening: his ethics and professionalism did not allow him to do that. Mr Mishal Al-Sanea replied:

> "I'm not satisfied at all. Surely, he [his father] misunderstood the matter. I will make things clear to him."

In his oral evidence, Mr Al-Sanea confirmed that he thought that this was a misunderstanding by his father, not a threat by the claimants.

64. There were private discussions between Dr Al-Subaihi and Mr Jamal Al-Muzein later that day, 3 April 2017, about what had happened. Dr Al-Subaihi told Mr Jamal Al-Muzein that Mr Al-Sanea Snr had twisted what he had said as a threat. In reply, Mr Jamal Al-Muzein left a voice message that "we should be careful about the words or messages that are issued… we have to be careful with them, because they are really dirty, as you said."

65. To my mind these exchanges simply show that the claimants were concerned about their words being mischaracterised, which in this case Dr Al-Subaihi immediately refuted, and that the claimants resolved to avoid words which could be misinterpreted in a similar manner in the future. It had nothing to do with an attempt Mr Aldridge suggested to avoid leaving a documentary trail, in particular of threats to the defendant. These messages also make it unlikely that only a few days later the claimants would issue threats or initiate a course of action to disrupt Mr Mishal Al-Sanea's wedding.

Defendant's wedding and his signature of promissory notes

66. Mr Mishal Al-Sanea was married in Riyadh on 4 April 2017. There were earlier differences in various part of his evidence about the timings of events that week, but his final evidence at trial was that he had arrived in Riyadh on Sunday, 2 April and met friends the following day. The civil and religious ceremony was held on 4 April 2017, beginning in the afternoon and continuing until the early evening.

67. A great deal was made of what was said to be the claimants' precise knowledge (which Dr Al-Subaihi denied) of what was to happen during the wedding week. This was part of the defence case about the claimants' intention to exert maximum pressure through threats and disruption. Given Mr Mishal Al-Sanea's own inconsistent evidence about what happened on what day of the wedding week, the allegation about the claimants' precise knowledge was considerably weakened. At trial it evaporated when Mr Mishal Al-Sanea accepted that, although the claimants knew about the wedding, they might not have remembered being told of the exact date of activities during the wedding week.

68. The following day after the wedding ceremony, in other words 5 April 2017, Mr Mishal Al-Sanea signed the promissory notes when he and Dr Al-Subaihi met at the Al Faisaliah Hotel, Riyadh. (In earlier evidence he had said that the signing was on his wedding day, to underline his case that the claimants pressured him at the worst of times.) The claimants exchanged messages about the achievement of Dr Al-Subaihi getting the promissory notes signed. For example, Dr Al-Subaihi left a voice message for Mr Jamal Al-Muzein:

> "May Allah protect you and facilitate your matters. I am really very happy that we finalised a huge milestone. Thanks to Allah, Lord of the Worlds, I hope everything ends well. I can work with eased heart and without lowering standards. Now, as the popular saying goes, the ball is in our court. Further, he has to stick to the payment schedule. In the past, we used to stress the subject of dates and payment on the due dates... etc. The pressure must continue but it will be less than it was previously. Now we are

> reassured and our rights are protected, especially our rights against the hospital, not in anything else. We pray to Allah to grant us success."

That day there was also a large family dinner, beginning at sunset and finishing early the next morning.

69. On Wednesday 6 April, the female celebrations took place, from early evening to early morning the next day. Earlier that day, 6 April 2017, Dr Al-Subaihi attended a meeting with the public prosecution, which were conducting an investigation on behalf of JDEK. The meeting went well, as Dr Al-Subaihi reported to Mr Jamal Al-Muzein once he had left the meeting. He added that "they must understand that it is not this easy so that they could pay our fees…" In reply, Mr Jamal Al-Muzein emphasised professionalism, and that they should tell the family the situation as it was. The claimants then exchanged further messages about keeping up the pressure for payment.

70. Then in the defendant's evidence on the 7 April there was a family lunch at the family home in Riyadh, a lunch for the remaining family on 8 April. Early on 9 April Mr Mishal Al-Sanea and his wife travelled to London for a short honeymoon. He then returned to Al Khobar.

Fingerprinting and re-signing of promissory notes

71. On 23 April 2017 Mr Mishal Al-Sanea gave Dr Al-Subaihi details of international wealth management for the family that had been operated in earlier years on a blind trust basis by a Cayman Island trust company. The information could not be disclosed, Mr Mishal Al-Sanea told Dr Al-Subaihi in a WhatsApp message, but it was being conveyed to him so he could be assured about the workings of the trust at the time.

72. On 24 April 2017 Dr Al-Subaihi and Mr Mishal Al-Sanea attended an interview with the public prosecutor, where the latter was accused of hiding his father's assets. Overall, the interview went well.

73. It seems that it was on that day that Mr Mishal Al-Sanea also fingerprinted each of the promissory notes that he had previously signed. The fingerprinting occurred at the offices of Mr Jamal's Al-Muzein's law firm.

74. There was a typographical error in some of the notes. Consequently, on 27 April 2017, Mr Mishal Al-Sanea signed and finger-printed the corrected notes.

75. Later he fingerprinted a note which was left out. It was brought to him by a lawyer in Mr Jamal Al-Muzein's law office. The original notes were kept at the law firm's office.

Pressure and threats over execution of promissory notes

76. Mr Mishal Al-Sanea's case was that he was pressured to sign the promissory notes against his wishes. The first aspect was that the claimants made specific threats. In his third witness statement he said for the first time that on 4 April, the eve of the wedding ceremony, the claimants made four telephone calls containing threats to cease acting in the JDEK proceedings and the public prosecution investigation (with the adverse inferences which would be drawn) and to reveal confidential information to JDEK.

Giving the timing during his wedding week, he was in what Mr Aldridge described as a "supremely vulnerable position".

77. There is no evidence supporting the defendant's case about these calls being made. The recorded messages passing between the claimants strongly support this conclusion. For example, on the evening of 4 April, Mr Jamal Al-Muzein told Dr Al-Subaihi that he would call Mr Mishal Al-Sanea the following day, and the following morning Mr Jamal Al-Muzein said at 9.12 a.m. that he had just woken up and that he would shortly telephone the defendant. He did not say that he had already spoken to him, nor did Dr Al-Subaihi say that he had himself spoken to Mr Mishal Al-Sanea either. Given that the claimants were open with each other about pressing the defendant for payment, the fact that neither mentioned having done so at this point leads me to conclude that the alleged calls did not occur and that no threats were made.

78. The second aspect of the defendant's case about pressure to sign the promissory notes concerned what the claimants might do during the wedding week. In his first witness statement and his Defence, Mr Mishal Al-Sanea said that he was concerned that the claimants' behaviour might disrupt the wedding. In his third witness statement he claimed to have been concerned that because of the claimants' actions the police might arrive to enforce a JDEK summons on him, thereby disrupting the wedding. At trial he explained that he had meant disruption by the police all along.

79. Apart from the inconsistencies in the defendant's evidence, this alleged threat is implausible for other reasons. There is no mention of any such threat in the contemporaneous messages between the claimants concerning matters such as disruption of the wedding or the disclosure of privileged information. (I have already rejected Mr Aldridge's submission that the claimants took steps to conceal such matters; although they were careful about telephone communications between themselves, there was a regular exchange between them on WhatsApp which, as is common knowledge, is encrypted.)

80. Further, on 6 April 2017, as we saw, Dr Al-Subaihi had a meeting with the public prosecution, which had gone well from the viewpoint of the family and its interests. Most importantly, on 7 April Dr Al-Subaihi sent wedding congratulations to Mr Mishal Al-Sanea. In his witness statement Mr Mishal Al-Sanea had said that he did not respond to this because he was too angry at what had happened on 5 April with his signing the promissory notes under pressure. As he conceded in oral evidence, however, in light of a WhatsApp message available at the hearing he did, in fact, respond. His message to Dr Al-Subaihi was in very warm terms of thanks, with a heart emoji.

81. Against this background and given what in my judgment was Mr Mishal Al-Sanea's propensity to mislead to protect his father's and family's interests, I cannot accept that he feared any disruption to his wedding week as a direct result of the claimants' actions. Nor were there any threats of disruption as described.

82. This conclusion gains support from what happened in the following weeks, his confiding in Dr Al-Subaihi about a family trust abroad and having Dr Al-Subaihi represent him with the public prosecutor. In particular there was his re-signing of corrected versions of three of the promissory notes and his fingerprinting of all of them. Mr Mishal Al-Sanea's oral evidence was that he fingerprinted the notes because he did

not consider it would make matters worse since he had already signed them. But he was re-signing and fingerprinting corrected versions of some of the notes, which puts paid to that suggestion because if he had not re-signed them it would have made a difference. He also said that it sounded correct that he had fingerprinted all or some of the notes not on one but on three occasions.

83. I accept Mr D'Cruz QC's submission that all this was a clear indication that Mr Mishal Al-Sanea was content with the promissory notes and that he wanted to verify his original signing of them on 5 April 2017. As Mr D'Cruz put it, he had had nearly a three-week cooling-off period since signing them to reflect on the meeting, including the alleged threats, and if he wished he could have sought separate legal advice from Saad Trading's in-house lawyers especially because Saad Trading was the issuer of the notes. Yet he did not raise any objection to fingerprinting the notes and signing new versions of three of them on three separate occasions. Crucial also, to my mind, is that Mr Mishal Al-Sanea accepted in his evidence to the court that no threats were made at these further meetings for the re-signing and fingerprinting of the notes.

Future use of promissory notes

84. There was a disagreement between the parties about what was said about the future use of the promissory notes. Mr Mishal Al-Sanea's evidence was that Mr Jamal Al-Muzein had told him that the notes would not see the light of day and were only to appease Dr Al-Subaihi. Mr Jamal Al-Muzein was not available for cross-examination but to my mind it does not make sense for him to say this. It was the case that the notes would be held in safe keeping at his firm's office, as indeed they were, ready to be used if payment did not occur. Dr Al-Subaihi's evidence was that this had been done previously with promissory notes Mr Mishal Al-Sanea had given for his sister. It is nothing to the point that in February 2018, when Dr Al-Subaihi was contemplating legal proceedings, that Mr Jamal Al-Muzein contacted Mr Mishal Al-Sanea to inform him that he had to hand over the promissory notes to Dr Al-Subaihi for this purpose. As custodian of the notes that was what Mr Jamal Al-Muzein would be expected to do.

85. As I have explained, the claimants made considerable efforts to obtain promissory notes, first from the father, then from Mr Mishal Al-Sanea. The suggestion that Mr Mishal Al-Sanea was told (or could believe) that they would never be relied on, enforced, or see the light of day is not logical. Nor is it credible. On 31 May 2017, when Mr Jamal Al-Muzein told Mr Mishal Al-Sanea that the promissory notes would be submitted to JDEK because of non-payment, his reply in a WhatsApp message was a request for a week's grace, and that he had solutions to present about payment, not to protest that Mr Jamal Al-Muzein had told him the promissory notes would never be used. When Mr Jamal Al-Muzein responded that presentation of the promissory notes would be delayed, he expressed gratitude. When asked about this at the hearing and his inconsistent evidence about the notes never seeing the light of day, Mr Mishal Al-Sanea gave no convincing explanation. That is because, in my judgment, there is none.

Content of the promissory notes

86. The promissory notes are all dated 1 October 2016 and were issued at Al Khobar. They were all issued by Saad Trading and signed by Mr Mishal Al-Sanea, the defendant, "in his capacity as the Manager of Saad Trading…".

87. The guarantor on the notes was the Saad Hospital and signed by Mr Mishal Al-Sanea "in his capacity as the Manager of Saad Specialist Hospital Co." In his witness statement he said that he would not have entered into the promissory notes on behalf Saad Hospital because that was not in its best interest. However, in cross-examination he accepted that in his management of the various Saad businesses he had always prioritised protecting his father's interests over those of any particular entity and was therefore content for the hospital to stand as guarantor if that was in his father's interests.

88. Notes in favour of Mr Al-Muzein and his law firm totalled SARs 27 million. These were stated to be payable quarterly over a 15-month period as follows: SARs 3 million on 30 January 2017; SARs 4 million on 30 March 2017; SARs 5 million on 30 June 2017; SARs 5 million on 30 September 2017; SARs 5 million on 30 December 2017; and SARs 5 million on 30 March 2018. There were two Notes in favour of Dr Al-Subaihi totalling SARs 64 million payable on 5 February 2017. The total indebtedness on the promissory notes was SARs 91 million.

89. Dr Al-Subaihi's evidence was that the failure to honour promissory notes in KSA is a serious offence and liability is automatic. Both sides accepted that potentially under KSA law, as a director of the Saad Hospital, Mr Mishal Al-Sanea could be personally liable through his signature of the promissory notes if they were to be enforced in JDEK against the Saad Hospital as the guarantor.

Non-payment and events late April-July 2017

90. The promissory notes were not paid. Over the period from April 2017 to July 2017 the claimants chased for payment and warned that they would cease acting for the family and the Saad businesses if they were not paid their fees. Notwithstanding that, during this period the claimants continued to provide legal services to the Saad businesses and Al-Sanea family.

91. On 26 April 2017, the claimants were issued powers of attorney by Mr Al-Sanea Snr on behalf of his family (including Mr Mishal Al-Sanea).

92. On 1 May 2017 Mr Jamal Al-Muzein warned Mr Mishal Al-Sanea about non-cooperation with the court, and that if his fees were not paid Dr Al Subaihi would resign:

> "Mishal, your father has to be more serious. It is a hot water, His failure to cooperate with the Execution [JDEK] will lead to disasters. Al Subaihi swore if your father does not pay the fees he will walk away and he will not stop until he presents his claim before the JDEK judge."

93. JDEK had ordered Mr Al-Sanea Snr to disclose his assets. On 3 May 2017 Dr Al-Subaihi submitted a booklet of information to the court which Mr Al-Sanea Snr had had prepared to comply with that order. The covering letter to the court was copied to Mr Mishal Al-Sanea. He accepted in his evidence that there was an obligation to disclose this information to JDEK and that the claimants as his father's and the family's representatives were appropriate persons to submit the material to the court.

94. At the end of May there was still no payment of the claimants' fees. The claimants messaged each other and Mr Mishal Al-Sanea about the consequences if they stopped work and presented the promissory notes to JDEK. On 31 May 2017 Mr Mishal Al-Sanea asked for another week to arrange payment. He told them that he was away but, on his return, he said, he had solutions which he would present to them. The claimants agreed to extend further time for payment.

95. On 1 June 2017 the claimants exchanged messages that Mr Mishal Al-Sanea was afraid that they would cease working and that the pressure on him to arrange payment of their fees had to be maintained. In cross-examination Dr Al-Subaihi was asked many times about exercising pressure on the defendant, which he conceded but justified as the assertion of his legal rights to obtain payment of the claimants' lawful fees.

Termination of retainer and letter for JDEK, July 2017

96. The warning that the claimants would cease acting for the Al-Sanea family and the Saad businesses culminated in a letter the second claimant, Mr Jamal Al-Muzein, sent to Mr Al-Sanea Snr dated 6 July 2017.

97. A little while after, the claimants ceased acting for Mr Al-Sanea Snr, the family, the Saad businesses and the Saad Hospital. Mr Mishal Al-Sanea's evidence was that "they ceased acting in around July 2017." His evidence was that it was around 13 July 2017, and that the claimants were not their representatives again after that date. He said that the family appointed a new lawyer. By 17 July 2017, Mr Mishal Al-Sanea said in evidence,

> "my relationship with Al Subaihi and Jamal had almost entirely deteriorated, the new attorney had taken over, Al Subaihi and Jamal had completely stopped work".

98. There was a draft letter, which the claimants exchanged on 26 July 2017, for sending to JDEK to explain to the court the reasons that as from 9 July 2017 they were no longer representing Mr Al-Sanea Snr or Saad Trading. The draft letter read, in its relevant part:

> "Since our client has failed to fulfil the contract, has failed to provide the information and [has failed to fulfil] the Circuit's requests, all of which has caused a delay in delivery of what is asked of us and caused us great embarrassment before the Circuit, and since this matter violates the principles of the profession, this has led us to stop representing Mr Maan bin Abdul Wahed Al-Sanea and the Saad Trading, Contracting and Financial Services Company as of Sunday, 15/10/1438 A.H. corresponding to 09/07/2017 A.D., all the while stressing the accrued fees that they owe us."

99. There is no direct evidence that this version of the letter, or indeed that any letter was ever sent to JDEK. Whether JDEK was told or not, in Mr Aldridge's submission the draft letter was "scandalous" in that the claimants could contemplate informing the court that their clients had not complied with the court's orders ("spilling the beans", as he also put it). While the letter's phraseology is to say the least unfortunate (at least in translation, and in an English context) I am afraid that in my view this was one of a

number of submissions advanced on the defendant's behalf which were exaggerated in the telling. In fact, we know from other evidence that the defendant's father was dragging his feet in complying with the court's requests, so that this aspect of any letter would have not been news to the JDEK judges. Apart from that, the letter underlines that the lawyer-client relationship ceased in July 2017.

100. The defendant's father and family engaged new lawyers. As is explained shortly, on several occasions after this Mr Mishal Al-Sanea sought to reengage the claimants for legal work but they refused. Against this background my conclusion is that after July 2017 there was no revival of the lawyer-client relationship between the parties.

Events in August 2017

101. On 26 July 2017 the claimants discussed the fate of Mr Mishal Al-Sanea, whom they had tried to contact about their fees. They speculated about how secure his position was, Dr Al-Subaihi messaging Mr Jamal Al-Muzein that Mr Mishal Al-Sanea wanted to escape to London. A little later he commented that they were enforcing against the Saad Hospital, and "the first request is to prevent the shareholders from travelling." He added: "But don't go soft." Mr Jamal Al-Muzein said that he would not, and that the judge would take action. I accept that this supports the defendant's submission that the claimants considered applying to JDEK for a travel ban against Mr Mishal Al-Sanea, although nothing was ever done.

102. It seems that at some point in August 2017 bench warrants were issued for the defendant and his older brother. In any event Mr Mishal Al-Sanea travelled to London around this time and has been here ever since, thus avoiding the imposition of the travel bans to which other members of the family have been subject.

103. On 6 August 2017, Dr Al-Subaihi proposed that he could do new work, for which he would need a new contract and power of attorney, if Mr Mishal Al-Sanea sold some of his properties abroad to pay off half the claimants' fees. In his oral evidence Mr Al-Sanea agreed that this is what Dr Al-Subaihi was seeking, commenting that he was proposing

> "new work he could do to assist my family, even though the old work had stopped…He was trying to get new work with a new contract, and a power of attorney for that proposed new work."

104. In August 2017 Mr Mishal Al-Sanea sought the claimants' assistance in relation to delaying the execution of the bench warrant against his father because, as he explained, their new lawyer did not fully understand matters and his strategies were making the situation worse. However, the claimants refused to act again unless their fees were paid. Mr Mishal Al-Sanea also sought Mr Jamal Al-Muzein's advice in relation to possible action by the KSA authorities against him and his brother. He also approached Dr Al-Subaihi. In his witness statement Dr Al-Subaihi says that it showed Mr Mishal Al-Sanea's continuing trust in him. I interpret that to mean trust in his competence.

105. In fact during this period, from the end of their retainer, although the claimants and the defendant remained ostensibly cordial in their dealings with each other, their perceptions of each other had irretrievably soured. The claimants' views are illustrated by an exchange in early August, where they describe the defendant as a liar, with no

shame, who was stalling and would not pay. Dr Al-Subaihi referred to "devastating" (in translation) the defendant and there are messages about keeping up the pressure at this point and later in mid-August.

106. As well, on 14 August 2017 the claimants exchanged messages that Mr Mishal Al-Sanea was afraid of his father learning of the promissory notes, as well as about a travel ban if he returned from London. In another message Dr Al-Subaihi said: "Thank God the police have arrived before they run away, the thieves." At the time the claimants were misleading about their location in order, as they conceded in their messages, to keep up the pressure on Mr Mishal Al-Sanea to pay. Dr Al-Subaihi's view was that Mr Mishal Al-Sanea was afraid that they would turn against him.

107. As to the defendant, referring to the period around the arrest of his father and brother, he stated his "dislike and distrust I had by this stage for both the claimants." By the time of the signing of the FCA in November 2017 his evidence was that he "did not trust Al-Subaihi at all by this stage, not least because he was threatening to disclose privileged information." I return to the issue of disclosing privileged information later in the judgment.

Claimants' pressure and defendant's ruses July-November 2017

108. In response to the claimants' demands for their fees, Mr Mishal Al-Sanea promised payment without, as he accepted in his evidence, any intention of paying. An example in early 2017 was the promised cheque, which as explained earlier never arrived. The defendant admitted to further ruses, one about using Kingdom Company shares, another about obtaining a loan from a Saudi prince. In August 2017, his evidence was that he told the claimants that he was raising money from selling family jewellery. In fact the jewellery had been sold some time previously, but it was coming up for auction by the new owner. In his oral evidence he explained the deception:

> "The jewellery was real, but this was really another attempt by me to try to buy further time, and make the claimants think they might be paid soon... I knew that the new owner was putting it up for auction later that year, so I was hoping to use them -- to show them that it is an auction later."

109. During the following month, September 2017, there were still no payments in accordance with the payment dates on the promissory notes. The claimants exchanged messages about pressing Mr Mishal Al-Sanea to pay and from the 10 September 2017 both claimants contacted him several times chasing the overdue fees. Dr Al-Subaihi became increasingly exasperated as Mr Mishal Al-Sanea avoided talking to him despite agreeing times to do so. On 18 September 2017 he contacted Mr Jamal Al-Muzein to "send a message to [him] just to depress him [three smiley faces]". In one of his replies, Mr Jamal Al-Muzein said that Mr Mishal Al-Sanea had manipulated them for three months, to which Dr Al-Subaihi replied:

> "However, I will not leave him alone until I spoil his life. He will not humiliate me. I will harass him until he turns off his mobile phone, or he blocks me, or until we get something out of it. Then I want you to curse him."

110. In October 2017 Mr Mishal Al-Sanea's father and brother were arrested and imprisoned. He contacted Mr Jamal Al-Muzein, explaining his worry about them and the rest of his family, seeking assistance, asking Mr Jamal Al-Muzein to "Do what you can do." Mr Jamal Al-Muzein responded with some impromptu advice, relayed some information he had found out as to the detention, and offered to send Dr Al-Subaihi to Mr Al Sanea Snr's house to assist. Two days following the arrest of his father and brother, Mr Mishal Al-Sanea contacted Mr Jamal Al-Muzein and left a voice message:

> "God willing, if you come back, I want to you to meet with my uncle Mazen and make some arrangements with him. I mean, we can't do without your advice Abo Abdul Aziz [the second claimant]. It is clear that things are very messed up and screwed up as they say. May God facilitate things, God willing."

Mr Jamal Al-Muzein responded by giving some impromptu advice. Mr Mishal Al-Sanea also contacted Dr Al-Subaihi for assistance.

111. However, the claimants refused to act again without payment of their fees. At the time Dr Al-Subaihi explained his position to Mr Mishal Al-Sanea:

> "Frankly, I have commitments, and I expect and demand that my commitments to be honoured during the beginning of next week, because I have made commitments to people based upon your promise to me!
>
> So please forgive me but, on Sunday, I will have no choice but to submit... And please, if you have something practical, if you have something practical, there is no reason to waste your time and waste my time. Frankly, this matter has required a lot of effort from me, and I have been patient for a long time. You promised me and... and you gave me these promissory notes, and I... they are worthless papers to me. So please, if you have something, send me a specific message on what you want to do. What you will give me. On Sunday you will pay such and such. On such and such a day you will pay... You will pay such and such a sum. Otherwise, forgive me, as I will have no choice but to submit them on Sunday. The promises are old. Unless you can at least pay half of the claim, if not two-thirds, within the next week, everything will be over! I am sorry. I will have no choice but to submit them on Sunday. Please forgive me. I know the timing is difficult but my circumstances are also very difficult, and, by God, I can't wait."

112. As mentioned the family had retained a new lawyer after the claimants ceased acting. They were also looking for another lawyer for the brother. Mr Mishal Al-Sanea told Mr Jamal Al-Muzein that their lawyer was not returning their calls since he wanted payment in advance. In the course of the messages exchanged between them, Mr Jamal Al-Muzein told him:

> "The problem is no one can believe that you can't pay."

113. The claimants continued to pursue their fees. In early November Dr Al-Subaihi sent Mr Mishal Al-Sanea a message: "Please let us finish this." In oral evidence Mr Mishal Al-Sanea agreed that there were no threats and that it was a polite, respectful message. Dr Al-Subaihi told him on 12 November 2017 that he in turn was being pressed by his creditors. Again Mr Mishal Al-Sanea's evidence was that the messages at this time did not contain threats but constituted Dr Al-Subaihi chasing his fees. On 22 November 2017 Dr Al-Subaihi reported to Mr Jamal Al-Muzein that there were no lawsuits (by his creditors) filed against him in Riyadh.

Signing of FCA, November 2017

114. The claimants' evidence was that they decided that they needed a formal agreement dealing with the settlement of their debts. A factor may have been that enforcement of the promissory notes against Saad Trading and the Saad Hospital in JDEK would have borne little fruit given the many other claims against these entities, albeit that there was also the potential personal liability of the defendant under the notes. The negotiations with Mr Mishal Al-Sanea in this regard were initially conducted by Mr Jamal Al-Muzein. On 1 November 2017 he told Mr Mishal Al-Sanea that Dr Al-Subaihi had agreed to a 15% discount on his own fees, but not for others who had to be paid, if Mr Mishal Al-Sanea signed an agreement.

115. The claimants prepared a draft agreement which they exchanged between themselves on 20 November 2017. Two days later, on 22 November 2017, Mr Mishal Al-Sanea suggested a discount of 30/40% in the fees owing, with 30 days to pay. Eventually, a 34% reduction was agreed, reducing the amount from SAR 91 million to SAR 60 million (around USD 16 million) on condition that the amount was paid within a month (later extended to 60 days).

116. Dr Al-Subaihi sent the draft FCA to Mr Mishal Al-Sanea on 23 November 2017. He said he would travel to London, where Mr Mishal Al-Sanea was based, for him to sign. On the 25 November Dr Al-Subaihi asked in WhatsApp messages for Mr Mishal Al-Sanea to speak to him so they could agree details and that he was waiting for Mr Mishal Al-Sanea's amendments to the contract.

117. On 28 November 2017 Dr Al-Subaihi and Mr Mishal Al-Sanea met at the Dorchester Hotel, London, and they discussed the draft agreement. Dr Al-Subaihi's evidence was that Mr Mishal Al-Sanea suggested including a non-disclosure clause and a clause stating that he would be reimbursed if Mr Mishal Al-Sanea Snr paid directly. While Mr Mishal Al-Sanea's evidence was that his amendments were rejected out of hand, Dr Al-Subaihi said that it was agreed that nondisclosure could be addressed separately and that, as to payment by his father, Mr Mishal Al-Sanea accepted his explanation that there would be no double payment.

118. Then on 29 November 2017 Mr Mishal Al-Sanea signed the FCA. His evidence was that he spent the whole day on the telephone to lawyers and advisers on his father's business matters. In the evening, Dr Al-Subaihi and Mr Mishal Al-Sanea met again at the Dorchester Hotel and the FCA was signed. Mr Mishal Al-Sanea described Dr Al-Subaihi as being in jubilant mood when the FCA was signed. In his oral evidence Mr Mishal Al-Sanea accepted that there were negotiations but that it did not matter to him since he was not going to pay under the FCA. His evidence was that at the meetings Dr

Al-Subaihi offered many concessions such as the extra 30 days to pay. He signed because of the threats made about disclosing confidential information to JDEK damaging to his father's interests.

119. Mr Mishal Al-Sanea said that he also gained comfort by Dr Al-Subaihi's repeated assurance (which Dr Al-Subaihi denied) that if there was no payment under FCA, it would be as if it never happened, in other words, it would be "null and void". This was a reference to clause 4 of the FCA and the contention that after 60 days it lapsed if there was no payment under it. We return to the interpretation of clause 4 below. At this point I note my rejection of the defendant's evidence that this assurance was ever given. Not only does it not make sense that the FCA would lapse after 60 days (a point Mr Mishal Al-Sanea accepted in evidence), but it is belied by the defendant continuing to treat it as extant well after that 60-day period had finished, indicating his intention to pay the discounted amount it provided, and not raising the null and void point. His explanation at the hearing was that he did not raise the null and void point because he wanted to delay matters for fear that the claimants would present the promissory notes to JDEK. The logic of this is not readily apparent to me.

Terms of the FCA

120. The FCA is dated 29 November 2017. It was between Dr Al-Subaihi in his personal capacity and on behalf of Mr Jamal Al-Muzein as the first party, and Mr Mishal Al-Sanea in his personal capacity, in his capacity as director of the Saad Hospital, and on behalf of his father. The Preamble (an integral part of the FCA according to clause (1) of the FCA) stated:

> "Whereas the First Party is a creditor of the Second Party's father pursuant to the legal services contract concluded between them and that the First Party has fully executed for the benefit of the Second Party's father; However, the Second Party's father has failed to pay [for services provided under that contract]. Whereas the Second Party has pledged to pay these debts on behalf of his father and has prepared a number of promissory notes for the First Party, which are now payable."

121. Clause 2 recorded that the first party had prepared promissory notes amounting to SAR 91 million for first party, SAR 27 million in favour of Mr Jamal Al-Muzein Advocates and Legal Consultants Office, and SAR 64 million in favour of Dr Al-Subaihi.

122. Clause 3 provided that these debts had been "settled so as to consist of: (1) an amount to SAR 8.5 million due to Mr Jamal Al-Muzein Advocates and Legal Consultants Office, and (2) SAR 51.5 million due to Dr Al-Subaihi.

123. The Fourth Clause stated:

> "This settlement shall be considered as full payment of the debt within a maximum period of sixty days from the date of signing this Agreement. If the Second Party fails to adhere to the timetable agreed upon, the payable amount shall be the full amount without any deductions, and this settlement shall be deemed null and void."

124. Clause 5 stated that the promissory notes were intended to settle payment for the legal services and legal consulting contracts which the first party had fully executed.

125. Under clause 6 "the Second party pledges to pay these amounts pursuant to the timetable" set out for payment, namely: (1) USD 5,000,000 within one week from the date of signing the FCA; (2) USD 3,000,000 within two weeks from the date of signing the FCA; and (3) USD 8,000,000 within eight weeks from the date of signing the FCA. Following payment, the promissory notes were to be handed over to the second party: clauses 7 and 8. Clause 9 acknowledged that Mr Jamal Al-Muzein Advocates and Legal Consultants Office had other claims for legal services provided to Mr Al-Sanea Snr which could be claimed separately.

126. Clause 10 provided that the FCA terminated any contractual relationship between Dr Al-Subaihi and the second party and that, in the event of payment, Dr Al-Subaihi would not be entitled to make any claims against the second party, his father or any of their affiliate companies, including Saad Hospital. Under clause 11, upon payment the relationship between Dr Al-Subaihi and Mr Mishal Al-Sanea, Mr Al-Sanea Snr and Saad Hospital was terminated.

Pressure/threats and defendant's agreement to the FCA

127. Mr Mishal Al-Sanea's case was that he signed the FCA because of the threats by Dr Al-Subaihi, which Dr Al-Subaihi denied, and the extreme pressure he had been placed under ("battered", as Mr Aldridge expressed it).

128. The context in which the defendant's case on this aspect was made was one where he had never complained about threats or mentioned them in any message to anyone. As at the time of the signing of the promissory notes, the tone of the messages between the claimants and the defendant when the FCA was negotiated and signed continued to be polite and respectful. The first time Mr Mishal Al-Sanea mentioned threats in connection with the promissory notes and the FCA was in his first witness statement of 5 December 2018, served in support of his jurisdiction challenge. In re-examination before me his evidence was that he did not raise them because he was afraid (in some unspecified way) of the claimants. In my view the prolonged delay in raising the allegations of threats, despite numerous opportunities to do so, is not an auspicious foundation for his case about threats and his signature of the FCA.

129. On the defendant's case the threats surrounding the FCA took two forms. There was a specific threat if he did not sign it the claimants would disclose confidential and privileged information about his father to JDEK which they had obtained in the course of their retainer. Later in these proceedings Mr Mishal Al-Sanea added an additional threat, that the claimants said that they would enforce the promissory notes at JDEK. (This alleged threat to present the promissory notes to JDEK is the subject of a late application to amend, addressed below.)

130. During his evidence at the hearing Mr Al-Sanea was asked whether the claimants' threat to reveal confidential information to JDEK was the only reason that he was forced to enter the FCA. His reply was that "when we come to look at it, I will think of some more". The following day of the hearing he was asked again, and he added the threat to enforce the promissory notes at JDEK. This did not strengthen his case about threats and the FCA.

131. As to the threat to reveal privileged and confidential information, in Mr Mishal Al-Sanea's witness statement it was said to be an express threat by Dr Al-Subaihi that, if he issued a claim to JDEK, he would "disclose certain very sensitive information that he knew as my father's lawyer." In cross-examination Mr Mishal Al-Sanea was asked to explain what sensitive information was being referred to and why in the pleadings the threat was more by inference but in his witness statement had become explicit. In reply he explained (for the first time) that Dr Al-Subaihi had given him a flavour of the information but never told him specifically what the information was, although an example mentioned was an investigation by the Capital Markets Authority which had been made to "go away".

132. Quite apart from the contradictions in the defendant's case about the claimants' alleged threat to disclose privileged and confidential information, and the general issue of his credibility, there are other reasons for my conclusion that no such threat was ever made. First, there is nothing about this in the claimants' contemporaneous WhatsApp messages either to the defendant or as they updated each other about his promises and failure to pay. Earlier I have indicated that these messages are numerous and have rejected that there is a trove of "off-line" messages between the claimants where discussion of this threat might be concealed.

133. Secondly, there were powerful disincentives to the claimants disclosing privileged and confidential information to JDEK. In early May 2017 Dr Al-Subaihi submitted a booklet of information to JDEK about Mr Al-Sanea's assets, on his instructions and in compliance with JDEK's order, and in 2018 Mr Jamal Al-Muzein disclosed further information to JDEK to comply with a further order. But as Dr Al-Subaihi explained, to disclose privileged and confidential information without such lawful authority is a serious breach in the Kingdom. There are good reasons to believe that the claimants would not do it. In early April 2017, when Mr Al-Sanea Snr asserted that Dr Al-Subaihi's message ("things will get worse due to the non-payment") was a threat, it will be recalled that the claimants had remonstrated that no threat was intended and that for them to do so would be in breach of their professional obligations. It will also be recalled that Mr Mishal Al-Sanea himself had said at the time that his father had misunderstood the position.

134. As to the pressure on him because of the threat to enforce the promissory notes in JDEK, Mr Mishal Al-Sanea in his third witness statement had led on the adverse implications of this, first for him because of his potential personal liability on the notes; secondly because, hitherto, no one in his family knew that he had signed the promissory notes; and thirdly for his brother, who with his father had been detained on 18 October 2017. The first two concerns are understandable. As to his brother, his evidence was that he was concerned that if the claimants submitted the promissory notes to JDEK, the additional debts against the Saad Hospital would threaten its solvency and thus prevent his brother's release because of the inability to pay his debts.

135. This suggestion comes up against the defendant's own admission that at the time of the FCA in November 2017 the hospital's debts stood at USD13-16 million, which was too high to pay given the family's liquidity problems. I also find the claimants' submission persuasive, that if Mr Mishal Al-Sanea was so terrified by the enforcement of the promissory notes because of the consequences for his brother's imprisonment, one would have expected to see a change in his attitude after his brother was released from

detention in December 2017, for example, challenges to his liability under them, yet he still continued to promise to pay and never clearly disputed liability.

136. In the proposed amendment to Mr Mishal Al-Sanea's Amended Defence, Mr Aldridge couples enforcement of the notes in JDEK with its draconian powers. That takes matters no further. Mr Mishal Al-Sanea accepted that the family well knew of JDEK's powers and the risks in relation to asset freezes, travel bans and even imprisonment. Indeed, the family's assets had been frozen since 2009 and Mr Al-Sanea Snr had been under a travel ban since then. As mentioned earlier, Mr Mishal Al-Sanea also accepted that it was only after Dr Al-Subaihi would brief him about the situation concerning the actions against his father and his businesses, including these risks, that he would raise the issue of the claimants' fees.

137. I accept that the claimants gave the defendant warnings, "threats" to use that language, that the promissory notes might be presented to JDEK if their fees were not paid. (Earlier I rejected Mr Mishal Al-Sanea's evidence that he had been assured that the promissory notes would never see the light of day.) The issue is one of law. JDEK was where the notes could be legitimately enforced; that was where claims against Saad Trading and Saad Hospital as signatories to the notes, and potentially against Mr Mishal Al-Sanea himself, would be brought. The crucial issue is whether it was lawful for the claimants to threaten the defendant that if their fees were not paid the promissory notes would be enforced in JDEK, and leading the defendant to enter the FCA. The issue is addressed in Part IV of the judgment.

Legal advice and defendant's signature of FCA

138. In cross-examination Dr Al-Subaihi was asked about Mr Mishal Al-Sanea's signing the FCA and whether if he (the defendant) had obtained legal advice he would have been told it was mad to sign it because he did not owe the fees himself. He replied: "Yes, they could say that." He was then asked why he had not offered that advice. His answer was that at that point he was not Mr Mishal Al-Sanea's or the family's lawyer. When asked further about this, and whether as an independent lawyer he would have advised the defendant not to sign because the FCA made him personally liable, he replied: "Sir, if I was his lawyer, I'd have told him a lot more than that."

139. Mr Mishal Al-Sanea said in his third witness statement that he had lawyers in London and KSA and could have discussed the FCA with them. (It will be recalled that on the day he signed the FCA, 29 November 2017, Mr Mishal Al-Sanea's evidence was that he spent the whole day on the telephone to lawyers and advisers on Saad matters.) However, since his father and the Saad businesses were clients of those lawyers, his evidence was that he was concerned that they would pass on information about it to other family members.

140. All that seems highly theoretical. In my view any of the lawyers Mr Mishal Al-Sanea dealt with, or their colleagues, could have advised him separately from their firm's work for his father and the Saad businesses about the FCA and be bound by client confidentially not to inform anyone about it. Mr Mishal Al-Sanea's additional reasons for not seeking legal advice about signing the FCA was that he had no time to obtain his own personal legal advice about it, that Dr Al-Subaihi would never agree to the delay associated with his obtaining advice, and in any event no lawyer would advise

him to sign. In my judgment these are all makeweight in character. That conclusion is supported by his evidence that he never intended to pay the claimants their legal fees, FCA or no FCA. Later in the judgment I return to the defendant's submissions about the claimants' legal obligations as regards the defendant's signing the FCA, including advising him to obtain independent legal advice.

Promises to pay and other events post-FCA

141. In the months following signature of the FCA, Dr Al-Subaihi chased repeatedly for the fees and Mr Mishal Al-Sanea continued to promise payment without disputing liability under it. In his evidence he said that he never intended to pay but wanted to make the claimants believe that they would be paid.

142. As with the jewellery story in August 2018, he admitted that he concocted false accounts for the claimants about raising funds to make payment of their fees. He conceded that these were tactics, and that he had no intention of using any proceeds to pay the claimants. In the second half of January 2018, he foreshadowed an invented payment through an escrow agent. In his oral evidence he said that he was having discussions with investors which might assist the hospital. He continued:

> "I was trying to suggest to Al-Subaihi that the position would be resolved soon, to try to stop him going to JDEK. I referred to an escrow agency because I thought that might make what I was saying more convincing, and I knew it was something they might be less familiar with as they were not involved in many international transactions from my knowledge…I was borrowing facts from deals I had been involved in to make my excuses seem real, but it was just a delaying tactic, and I never intended to pay."

There were other elaborations. In the first part of 2018 Mr Mishal Al-Sanea admitted to using a fake calendar invitation:

> "I was trying to make it seem to Al-Subaihi like he might get paid soon, so I sent him what was intended to look like a conference call invitation. It may have been based on a real calendar invitation I had received but was essentially something I made up to try to get Al-Subaihi off my back. I may have used the term "delivery" to suggest there was an asset sale going on, to release liquidity. But none of it was true."

143. Mr Aldridge submitted that what Mr Mishal Al-Sanea engaged in was what desperate debtors regularly do with excuses and false explanations to their creditors about imminent payment. That may be, although the defendant's invention in this regard was elaborate and, in his oral evidence, repeated (as Mr D'Cruz underlined) without embarrassment or contrition. Mr Mishal Al-Sanea freely admitted that the schemes were delaying tactics and that he had no intention of paying. In my view the key point is that following the FCA Mr Mishal Al-Sanea made repeated promises that he would pay. He did not dispute his liability under the FCA or seek to challenge it in any way. The stories he spun underline this point.

144. Dr Al-Subaihi continued to send anxious messages about when payment would be made, in which he recalled his generous cooperation and good faith actions. Mr Mishal Al-Sanea would avoid calling him as he requested. On 12 February 2018 Mr Jamal Al-Muzein contacted Mr Mishal Al-Sanea about this, reminded him that he and Dr Al-Subaihi had commitments to others, and that Dr Al-Subaihi was pressing him. He also informed him that he would have to hand over the promissory notes to Dr Al-Subaihi, who would present them to JDEK. On 15 and 16 February Mr Mishal Al-Sanea indicated that payment would be made. The promised transfer did not occur, so on 18 February 2018 Dr Al-Subaihi messaged him:

> "If you make the transfer, our agreement will be kept. However, you have to make the transfer this week or next week. This message is an obligation by me. If you don't make the transfer during the next week, I don't accept blame for my actions."

145. Two days later, on 18 February 2018, he sent a more formal message to Mr Mishal Al-Sanea, that because of his failure to reach a solution he had no choice but to take legal steps to reserve his rights and therefore he would have to claim the full amount plus legal fees.

Events February 2018 to launch of these proceedings

146. As mentioned above there was an order of JDEK dated 25 March 2018 requiring Mr Jamal Al-Muzein to disclose what he knew about the assets of Mr Al-Sanea Snr and Saad Trading as regards all types and classes. Mr Jamal Al-Muzein complied with the order in a letter of 10 April 2018.

147. In mid-January 2019 steps were taken to terminate the power of attorney Mr Mishal Al-Sanea had signed in 2016, described earlier, which had conferred wide powers on the claimants to act in legal matters. In his second witness statement Mr Mishal Al-Sanea said that the failure to cancel the powers of attorney was "an inadvertent oversight" and he

> "had considered it obvious that the claimants were no longer authorised to act on my behalf and it had not occurred to me that the powers of attorney, which I had regarded as an administrative step, would require revocation."

At the hearing he confirmed that this was still his evidence.

148. In my judgment the continuation of this power of attorney has no bearing on the relationship of the parties as lawyer and client. That it was extant until terminated in early 2019 does not affect the termination of the lawyer-client relationship in July 2017. Mr Mishal Al-Sanea's own evidence was that it was obvious that the claimants were not authorised to act on his behalf under it.

149. In February 2019 the Commercial Court in Damman, KSA, placed Mr Al-Sanea Snr and Saad Trading into bankruptcy. That court placed Saad Hospital into bankruptcy in December 2019.

150. From February 2018 both the claimants and the defendant had instructed English solicitors who engaged in discussions about the FCA. On 29 October 2018 the claimants issued the current proceedings against the defendant.

III LEGAL FRAMEWORK

Fiduciary duties

151. The starting point is Millet LJ's well-known synthesis in *Bristol & West Building Society v Mothew* [1998] Ch 1, at 18, that a fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. As regards the fiduciary dealing with his principal, Millet LJ said that "he must prove affirmatively that the transaction is fair and that in the course of the negotiations he made full disclosure of all facts material to the transaction."

152. The solicitor-client relationship is generally fiduciary in character. In the Privy Council case of *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673, Lord Parmoor said at 681-682:

> "The principle has long been established that, in the absence of competent independent advice, a transaction of the character involved in this appeal, between persons in the relationship of solicitor and client, or in a confidential relationship of a similar character, cannot be upheld, unless the person claiming to enforce the contract can prove, affirmatively, that the person standing in such a confidential position has disclosed, without reservation, all the information in his possession, and can further show that the transaction was, in itself, a fair one, having regard to all the circumstances. In order that these conditions may be fulfilled it is incumbent to prove that the person who holds the confidential relationship advised his client as diligently as he should have done had the transaction been one between his client and a stranger, and that the transaction was as advantageous to the client, as it would have been, if he had been endeavouring to sell the property to a stranger. This principle is of wide application and must not be regarded as a technical rule of English law."

153. There are several qualifications to this principle. First, the fiduciary relationship between solicitor and client ends with the termination of the retainer. In *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222, Lord Millet (with whom the other law lords agreed) said at 235:

> "The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence."

154. Whether for any particular transaction a fiduciary relationship exists between those formerly in a solicitor and client relationship depends on all the circumstances. As Lord Parmoor advised in *Demerara Bauxite* at 675-676:

> "[A]lthough the relationship of solicitor and client in a strict sense has been discontinued, the same principle applies so long as the confidence, naturally arising from such a relationship, is proved or may be presumed to continue, and that even if the solicitor is no longer retained or acting, his duty, in the contemplation in a Court of equity, may still be such as to throw upon him the onus of upholding the validity of a [transaction with] his clients, and that in considering whether this onus lies upon him the test appears to be the proper answer to the question, whether in the particular transaction he owes his former client any duty in the contemplation of a Court of equity."

155. *Demerara Bauxite* was a case where after the solicitor had completed winding up the client's late husband's estate, he was approached by a company which wished to purchase land owned by the estate. Without a formal retainer in place, the solicitor liaised between the client and the company in negotiations for the purchase of the land. The negotiations were unsuccessful, but the client subsequently granted the solicitor an option to purchase the land, which the solicitor exercised. He then sold the land to the company. The Privy Council found that fiduciary duties continued because the solicitor held himself out as acting for the client in his negotiations with the company in relation to the purchase, and she had treated him in substance as her solicitor for that purpose.

156. In finding that fiduciary duties can continue if the relationship of confidence between solicitor and former client continues, the Privy Council relied on *Allison v Clayhills* [1904-7] All ER Rep 500. There Parker J said at 502:

> "In considering whether in any particular transaction any duty exists such as to bring the ordinary rule into operation, all the circumstances of the individual case must be weighed and examined. Thus, a solicitor may by virtue of his employment acquire a personal ascendancy over a client and this ascendancy may last long after the employment has ceased, and the duty towards the client which arises out of any such ascendancy will last as long as the ascendancy itself can operate. Again, a solicitor may by virtue of his employment acquire special knowledge, and the knowledge so obtained may impose upon him the duty of giving advice or making a full and proper disclosure in any transaction between himself and his client, though such transaction may take place long after the relationship of solicitor and client in its stricter sense has ceased to exist. And there may be other circumstances which may impose a duty on a solicitor, which duty may continue to exist after the relationship of solicitor and client in the strict sense has ceased."

In the circumstances of that case Parker J held that the solicitor was not acting in a fiduciary capacity towards the former client from whom he was taking a lease. Consequently, there was no duty of advising or communicating information which the solicitor had obtained while acting as such.

157. The claimants argued that there is no fiduciary duty owed for transactions involving a solicitor's remuneration. They cite a paragraph in *Halsbury's Laws of England*, vol. 66 (2020 ed.), para 551 and *Wollenberg v Casinos Austria International Holding GmbH* [2011] EWHC 103 (Ch). The claimants contend that the practical rationale for this is the inescapable conflict which exists in relation to such transactions and that the legal system would grind to a halt if lawyers were subject to fiduciary duties, for example, if there was a requirement that a client take independent advice on a fee agreement before a solicitor is able to act for him.

158. The position is, in fact, more nuanced. The Law Society's *Solicitors' Duties and Liabilities*, 2nd ed, 2010, states that if a solicitor's fee agreement contains terms which are complex or unusual, the solicitor should be satisfied that the client fully understands them, perhaps to the extent of recommending that the client take independent advice. Moreover, the authorities the claimants invoke do not unequivocally support the proposition they advance. The paragraph in Halsbury is based firstly on a passage from Lord Westbury LC's speech in *Tyrrell v Bank of London* (1862) 10 HL Cas 26; 11 ER 934. He said at 941:

> "All transactions between solicitor and client, which result in the solicitor's obtaining a benefit for himself, are subjected by Courts of law to strict scrutiny, when called in question by the client, and are treated as imposing obligations on the solicitor of greater or less stringency. In some cases the obligation goes so far as almost to bind the solicitor to abstain altogether from a transaction of the kind. Thus a solicitor may not accept from his client, while the relation of solicitor and client exists, remuneration for his professional services beyond that to which he is legally entitled… In the great majority of cases, however, the law does not exact so much."

159. Secondly, *Halsbury* refers to *Re Haslam & Hier-Evans* [1902] 1 Ch 765. That was a case where solicitors obtained remuneration from both their client, the purchaser, as well as the vendor. The Court of Appeal would have set the retainer aside even though the purchaser knew that the vendor was paying commission to the solicitors. (It could not do so, however, because the appeal was from taxation proceedings.) At 769-70 Stirling LJ said:

> "All transactions between solicitor and client, which result in the solicitor's obtaining a benefit for himself, are subjected by Courts of law to strict scrutiny, when called in question by the client, and are treated as imposing obligations on the solicitor of greater or less stringency. In some cases the obligation goes so far as almost to bind the solicitor to abstain altogether from a transaction of the kind. Thus a solicitor may not accept from his client, while the relation of solicitor and client exists,

> remuneration for his professional services beyond that to which he is legally entitled. In the great majority of cases, however, the law does not exact so much. A solicitor may, for example, purchase from his client, but there is imposed on him the burden of proving that his client was fully informed, and duly and honestly advised, and that the price was just."

160. As to *Wollenberg v Casinos Austria International Holding GmbH* [2011] EWHC 103 (Ch), the solicitor there was an expert in the gaming and betting industries and entered into agreements in 2005 and 2008 with a client to advise on its casino business for a specified annual fee and a success fee. When the solicitor sued to enforce the agreements, the client sought to set it aside for undue influence and breach of fiduciary duties. The main issues in the case were whether under the terms the solicitor was entitled to success fees. In relation to the 2008 agreement, however, Lewison J rejected an argument that the solicitor owed fiduciary duties:

> "[208]…The essence of a fiduciary relationship is that the fiduciary subordinates his own interests to his principal's. In this case, what was under negotiation was Mr Wollenberg's remuneration. It must have been (and was) obvious to CAI that he would be acting in his own interest in negotiating his own remuneration."

The defence of duress

161. In *Pakistan International Airline Corp v Times Travel* (UK) Ltd [2021] UKSC 40, which was handed down after the hearing of this case, the Supreme Court held that a party seeking recission of a contract for duress needed to establish firstly, a threat (or pressure exerted) by the defendant that was illegitimate; secondly, that that illegitimate threat (or pressure) caused the claimant to enter into the contract; and thirdly, in the context of economic duress, that the claimant must have had no reasonable alternative to giving in to the threat or pressure: [1], [78]-[79]. What constituted an illegitimate threat or pressure, Lord Hodge said, was closely aligned with the equitable concept of unconscionability: [2], [20].

162. Lord Hodge (with whom Lords Reed, Lloyd-Jones and Kitchin agreed) recognised that some earlier cases examining actual undue influence, where the influence was being exerted by a lawful threat, fell under the head of lawful act duress as a ground for rescinding a contract: [1], [82]-[92]. In lawful act duress, he held, the focus is on the nature and justification of the demand rather than the legality of the threat: [1], [88], [96]. In this respect the court would have regard to, among other things, the behaviour of the threatening party including the nature of the pressure which it applied, and the circumstances of the threatened party.

163. Noting that the law generally accepted the pursuit of commercial self-interest in commercial bargaining, Lord Hodge held that lawful act duress would rarely be found to exist in such bargaining. In his judgment, he identified two categories of lawful act duress in the caselaw, first situations where there was an exploitation of the knowledge of criminal activity and secondly, circumstance of using illegitimate means to manoeuvre a claimant into a position of weakness to force him to waive a claim. Since

the law generally accepted that the pursuit of commercial self-interest was justified in commercial bargaining, a demand which was motivated by commercial self-interest would, in general, be justified. At paragraph [44] Lord Hodge said:

> "A commercial party in negotiation with another commercial party is entitled to use its bargaining power to obtain by negotiation contractual rights which it does not have until the contract is agreed."

Undue influence

164. Apart from actual undue influence, which the Supreme Court in *Pakistan International Airline Corporation v Times Travel* (UK) Ltd suggested was in the nature of lawful act duress, presumed undue influence arises where, at the time of the transaction in question, the parties are in a type of relationship in which influence is commonly exercised by one over the other, normally a relationship of trust and confidence, and the transaction cannot readily be explained by the ordinary motives of ordinary persons in that relationship and the circumstances of the case: *Royal Bank of Scotland Plc v Etridge (No 2)* [2001] UKHL 44; [2002] 2 AC 773, [13]-[14], per Lord Nicholls.

165. The solicitor and client relationship is one such relationship where the law presumes, irrebuttably, that one party has influence over the other, so that the complainant need not prove he actually reposed trust and confidence in the other party: ibid, at [18]. However, Lord Nicholls said that it

> "would be absurd for the law to presume that … every transaction between a client and his solicitor … was brought about by undue influence unless the contrary is affirmatively proved. Such a presumption would be too far-reaching. The law would be out of touch with everyday life if the presumption were to apply an agreement whereby a client … agrees to be responsible for the reasonable fees of his legal … adviser… So something more is needed before the law reverses the burden of proof, something which calls for an explanation": at [24].

Unconscionability

166. As to the law of "unconscionable bargains", in *Pakistan International Airline Corp v Times Travel* (UK) Ltd [2021] UKSC 40 Lord Hodge noted that it "has been applied where B is at a serious disadvantage relative to A through "poverty, or ignorance, or lack of advice or otherwise" so that circumstances existed of which unfair advantage could be taken; A exploited B's weakness in a morally culpable manner; and the resulting transaction was not merely hard or improvident but overreaching and oppressive: *Alec Lobb (Garages) Ltd v Total Oil (Great Britain) Ltd* [1983] 1 WLR 87, 94-95…" [24]; see also Lord Burrows at [77]. Lord Hodge added that extortionate bargains can be struck down or varied in other circumstances, citing The Port Caledonia and the Anna [1903] P 184, although he noted that that decision may depend on specialties of maritime law.

IV THE ISSUES

A. FIDUCIARY DUTIES: THE FCA

167. At the hearing the defendant's primary defence was that, at the time the FCA was entered, the claimants and he were in a lawyer-client relationship, or at least a continuing relationship of confidence and ascendancy, which gave rise to fiduciary duties. Further, the claimants were in breach of their fiduciary duties in failing to advise the defendant not to enter the FCA, which was contrary to his interests. In response Mr D'Cruz contended that there is no fiduciary duty concerning a lawyer's renumeration (citing *Wollenberg v Casinos Austria International Holding GmbH* [2011] EWHC 103 (Ch)), and that in any event the lawyer-client relationship had ended in July 2017, before the FCA was entered.

168. In my judgment Mr Aldridge was correct in his submission that it was no answer for the claimants to say that since the FCA was about their remuneration no fiduciary duties arose. The FCA was not a retainer which related to fees to be incurred by a client in the future. Nor did it concern how a client was to pay fees incurred for work already completed. Rather, under the FCA a client, Mr Mishal Al-Sanea, was taking on liabilities for fees not owed by him. In his personal capacity, and in his capacity as director of the Saad Hospital and on behalf of his father, he was assuming liability for the fees which his father and the businesses owed. Whatever the law is in relation to a solicitor agreeing with a client about the payment of fees, in my view it does not apply in the present circumstances when Mr Mishal Al-Sanea had not incurred the fees himself but was taking on the liability for the fees owed by others. That is not the situation being addressed by Lewison J in *Wollenberg v Casinos Austria International Holding GmbH.*

169. However, for reasons given earlier, the lawyer-client relationship broke down in July 2017, before the FCA was negotiated. In these circumstances Lord Millett in *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222 was clear: the fiduciary relationship which subsisted between the claimants and the defendant came to an end with the termination of the retainer.

170. In particular circumstances, as recognised in *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673, a lawyer's fiduciary duties may outlive retainer work for the client. Mr Aldridge contended that if the retainer had terminated by the time of the FCA, there continued to be a relationship of confidence and ascendency between the parties giving rise to fiduciary duties. He invoked the words of Lord Parmoor in Demerara Bauxite, that "the confidence, naturally arising from such a relationship, is proved or may be presumed to continue", and those of Parker J in *Allison v Clayhills*, that the claimants were in a relationship of ascendancy over the defendant or had acquired special knowledge because of their position.

171. However, the facts do not support the existence of a relationship of trust, confidence or ascendancy as regards the negotiation and signature of the FCA in November 2017. Albeit that Mr Mishal Al-Sanea turned to the claimants in August 2017 and then in October 2017 when his father and brother were detained, that was to reengage them in representing the family. There was no trust and confidence when relations had become so embittered. He wanted the claimants for their competence and what they could do for his father and family, not because of any relationship of trust and confidence.

172. Nor was there a relationship of trust and ascendancy when the reality was that the defendant was a well-educated businessman entrusted under powers of attorney and directorship arrangements with wide powers in relation to Saad Trading and the Saad Hospital. Indeed, there is much in Mr D'Cruz submission that the extent to which the claimants over several years continued to act for the defendant's father, his family and the Saad businesses without payment indicated, at least in part, their influence over the claimants, not the other way round. The defendant wanted the claimants' services, but as in the past without having to pay for them.

173. Moreover, at the time the defendant signed the FCA he had, on his own account, access to lawyers both in London and KSA. His evidence was that he had spent the whole day before signing the agreement on the telephone with lawyers and advisers. In other words, he had access to independent legal advice but chose not to take it. These circumstances are far removed from those in Demerara Bauxite, where the solicitor held himself out as acting for the client as regards the land purchase and option agreement, and she treated him as her solicitor for that purpose. There was no such ascendency of the claimants over the defendant in this case.

174. Even if there had been a fiduciary relationship at the time of the FCA, there would have been no breach of the claimants' duties. Mr Aldridge placed emphasis on the duty to advise, using as a springboard Dr Al-Subaihi's concession in cross-examination that an independent lawyer might have advised Mr Mishal Al-Sanea many things, including not to sign the FCA. In Mr Aldridge's submission there were many material points for advice, for example, that there was nothing of benefit for him personally in the FCA, that he had no legal responsibility for the debts of his father or any family companies, and that it might have been better to leave the claimants to sue on the promissory notes in JDEK because the entities which had issued them were insolvent.

175. A fiduciary's duty to advise the principal is fact sensitive. In *Allison v Clayhills* [1904-7] All ER Rep 500 Parker J held that even if there had been a duty to advise, the client "understood the matter" and "had all the information with regard to all the material circumstances of the case" (at 506). In *Hanson v Lorenz Jones* (1986) 136 NLJ 1088, the Court of Appeal held that it was no part of the solicitors' duty to advise the client about the business or financial prudence of a proposed joint venture with a company controlled by his solicitor. "Provided that Mr Hanson, as the client, knew and understood the terms of the proposed joint venture and their implication" said May LJ, "whether the proposed joint venture was prudent or not was a matter for him."

176. That was the case here with the defendant, who was well-educated and knowledgeable in business. On his own evidence he was engaged in commercial negotiations for the Saad Hospital and, on his own account, a hard negotiator. With the FCA he knew and understood what he was signing, not least having had the draft agreement for six days and suggesting amendments. Crucially he had access to lawyers in the UK and KSA who could have advised him but for reasons I have found unpersuasive refrained from seeking their advice. In addition, he boldly asserted that he had no intention of paying the claimants come what may.

177. Further, there was an obvious benefit in the FCA for his father and the Saad businesses, the reduction by a third in what they had to pay the claimants for their fees under the promissory notes. As to Mr Aldridge's point that an independent lawyer would have

advised the defendant to leave the claimants to sue on the promissory notes because the entities which issued them were insolvent, there is the factual point that it was not until over a year later that the Commercial Court in Damman placed Mr Al-Sanea Snr and Saad Trading into bankruptcy, and not until two years later that the Saad Hospital faced a similar fate. There was also to be avoided the potential disbenefit of personal liability for the defendant under the promissory notes, which it seemed would remain notwithstanding the insolvency of Saad Trading and the Saad Hospital. In sum, there would have been no duty on the claimants to advise the defendant about anything surrounding his entering the FCA if there had been a fiduciary relationship between the parties, which at the time of the signing the FCA there was not.

B. FIDUCIARY DUTIES: PROMISSORY NOTES

178. Under the promissory notes Saad Trading and the Saad Hospital were liable through their signature by the defendant acting as their agent. Thus the defendant's case was that the claimants owed Saad Trading and the Saad Hospital fiduciary duties, since at the time these entities were the claimants' clients. That meant that the claimants had to give them full and frank disclosure and advise them they had no obligation to execute the promissory notes and that there were no advantages in doing so. Mr Aldridge submitted that in cross-examination Dr Al-Subaihi accepted that this was the advice he should have given, although in my view Dr Al-Subaihi never conceded that, and this is to misread one of his sometimes-convoluted replies.

179. In any event, Mr Aldridge fairly accepted that the defendant is not entitled to seek an order from the Court setting aside the promissory notes. No more need to be said about whether fiduciary duties were owed by the claimants to Saad Trading and the Saad Hospital and what they entailed.

C. DURESS, UNDUE INFLUENCE AND UNCONSCIONABILITY

180. Until the trial, Mr Mishal Al-Sanea's primary defence was duress, followed by undue influence and unconscionability. In summary Mr Aldridge's overall contention was that to have their fees paid there was a sustained, concerted bad faith campaign orchestrated by the claimants to place illegitimate pressure on Mr Mishal Al-Sanea to obtain his consent to transactions to which they had no right. It was summed up in the WhatsApp message between the claimants that they would apply "pressure, pressure, pressure" to have their legal fees paid. In Mr Aldridge's submission the facts relied upon to support Mr Mishal Al-Sanea's case in relation to duress, undue influence, and unconscionable transactions were the same and could be addressed together.

181. At the outset of his submissions under these heads, Mr Aldridge raised the nature of the fees claimed. Mr Aldridge submitted that no attempt has been made to show that the figure of 91 million SARs was correctly calculated. He pointed to the sheer quantum of the claimed fees; Dr Al-Subaihi's status as a sole practitioner; what he said were inconsistencies and evasions in Dr Al-Subaihi's account as to whether he had employees, his commissioning of experts, consultants, or other lawyers, and how much they were paid; and the level of fees for comparable work in the Kingdom.

182. Mr Aldridge accepted that ultimately the court did not need to decide whether the claimants' fees were properly incurred to decide the case. That being the position I need say nothing more about the matter, although I note that there was a letter dated 8 March

2015 from Mr Al-Sanea Snr to Dr Al-Subaihi approving fees of some SAR 40 million and other acknowledgments of what seem comparatively high fees to be paid or owed. The fact is, as Mr Aldridge fairly accepted, the claimants have come up to proof that they have not been paid the amounts under the promissory notes.

Duress

183. In Mr Aldridge's submission, the campaign of pressure the claimants conducted over six months and what he termed "outrageous threats" were such that not many people in the defendant's situation could withstand such pressure, and the defendant understandably did not. There was ample evidence for a finding of duress, along with undue influence and unconscionability. What the claimants had done, in his submission, was to look around for a solvent party they could bully into being put on the hook. Mr Aldridge contended that there was unlawful act duress in threatening to disclose privileged and confidential information to JDEK and to cease acting at improper moments.

184. Earlier I rejected the allegation of the claimants threatening to disclose privileged and confidential information to JDEK. As to the defendant's complaint of the claimants raising their demand for fees at improper moments - on the eve of matters reaching a crucial point in the proceedings against, or lives of, the family - there is little evidential support. There seems to be only one example in the documentation, of Mr Jamal Al-Muzein reporting on Dr Al-Subaihi making a threat (not carried through) of ceasing to act in May 2017 on the eve of a hearing. Moreover, the defendant did not identify these moments in any detail, especially as regards the period around the signing of the FCA. As to signature of the promissory notes there are my earlier findings about the wedding week and the absence of alleged threats then. Overall, there is the defendant's own evidence that pressure from the claimants about the outstanding fees came second after briefings about the latest developments on the mass of litigation involving the defendant's father and the Saad businesses.

185. With respect to lawful act duress my view is that none of what occurred reaches the high threshold the Supreme Court laid down in *Pakistan International Airline Corp v Times Travel (UK) Ltd* [2021] UKSC 40. The "pressure, pressure, pressure" which Mr Aldridge majored on goes nowhere near the extremely limited (or rare) circumstances of unconscionable conduct referred to by the Supreme Court as necessary to engage the doctrine of lawful act duress. In his judgment, Lord Hodge identified only two categories in the case law, the first and only relevant category for present purposes being "where a defendant uses his knowledge of criminal activity by the claimant or a member of the claimant's close family to obtain a personal benefit from the claimant by the express or implicit threat to report the crime or initiate a prosecution": at [4].

186. Mr Aldridge relied heavily on *Williams v Bayley* (1866) LR 1 HL 200, which was approved in the *Pakistan International Airline* case. There a bank had been given promissory notes on which the signature of the purported debtor had been forged by a customer's son. The bank pressured the father to take on the liability using implied threats to bring a criminal prosecution against the son for forgery. The House of Lords set aside the agreement on the basis that it was procured by illegitimate pressure because of the threat of criminal prosecution. Mr Aldridge analogised the power of JDEK to imprison debtors for non-payment of debts and contended that the claimants' threat to

take matters to JDEK was equivalent to the threat to bring a prosecution in *Williams v Bayley*. There is no such equivalence, underlined by Lord Hodge placing *Williams v Bayley* in the category of what he described as "exploitation of knowledge of criminal activity". There was no such criminal activity in this case.

187. Rather, the analogy in *Williams v Bayley* is with Lord Cranworth's example that it was not illegitimate pressure if the bank had simply told the father that, if he did not take on his son's debt, the bank would sue his son in civil proceedings: at 209-210. In other words, there is nothing illegitimate in a creditor pressing a third party to take on the debts of another debtor, even by the threat of civil proceedings.

188. Undoubtedly the claimants in this case pressed the defendant to arrange the payment of the fees owed by his father and his father's businesses. To secure their payment they pressed him to sign the promissory notes (which had been foreshadowed in the October 2016 agreement, but botched by the father) as well as the FCA. In light of the authorities this pressure does not amount to duress. The threats about ceasing to act as lawyers to the defendant, his family and the Saad businesses, bringing proceedings to claim their fees, enforcing the promissory notes in JDEK, and even applying for a travel bans for the family – all constituted lawful conduct and amounted to legitimate pressure. In light of the authorities this pressure does not amount to duress.

189. In particular, there was no targeting of Mr Mishal Al-Sanea since under the October 2016 agreement he was designated, along with his father, as the person to approach on the claimants' fees. On his own account there no pressure when he signed again three of the promissory notes and fingerprinted all of them. We saw that in his evidence Mr Mishal Al-Sanea accepted that the claimants were entitled to terminate their retainer if they were not paid, as well as to chase him for their fees and to warn of the repercussions with JDEK. Even before March 2017 he knew about the separate risks from the JDEK proceedings (and the attendant public prosecution investigation) and that it had the power to impose travel bans and asset freezes and that criminal proceedings could ensue. Consistently with the authority of *Pakistan International Airline Corp v Times Travel (UK) Ltd* [2021] UKSC 40 there was no duress in the circumstances of the defendant's signing the promissory notes or the FCA.

Undue influence

190. The defendant's case on actual undue influence paralleled his case on duress and fails for the same reason in relation to the pressure and threats the claimants are said to have exercised. The claimants exercised legitimate commercial pressure for payment of their fees, and lawfully warned the defendant and his father on numerous occasions that, should they remain unpaid, they would cease working for them and the Saad businesses. Enforcement of the promissory notes in JDEK had certain consequences but pointing these out would not have constituted actual undue influence.

191. As to presumed undue influence, the defendant's case was that the presumption arises because of the lawyer-client relationship, or the relationship of trust and ascendency between the claimants and him, and because the promissory notes and the FCA in which liability was undertaken could not be readily explained by the relationship of the parties.

192. There was a lawyer-client relationship when the promissory notes were signed, but they are readily explained if explanation be needed. There had been many requests for

payment of the claimants' fees, none of which yielded fruit despite the defendant's promises. The promissory notes gave security to the claimants beyond what under the retainer agreements and October 2016 agreement were ordinary debt claims. Mr Mishal Al-Sanea had the powers of a director of Saad Trading under his power of attorney and was also a director of the Saad Hospital; he signed in those capacities. Saad Trading was owned and controlled by Mr Al-Sanea Snr, and the Saad Hospital by his wife and children, including Mr Mishal Al-Sanea. The debts covered by the promissory notes were those of Mr Al-Sanea Snr, Saad Trading and other members in the Saad Group (of which Saad Trading was the parent company) for which the claimants had provided legal services. Albeit that the promissory notes the defendant signed were greater in amount than those contemplated by the October 2016 agreement, the fact is that in signing the notes Mr Mishal Al-Sanea would retain the claimants' legal services.

193. As to the FCA, at the time the defendant signed it the lawyer-relationship had been terminated. Moreover, as explained earlier, there was no relationship of trust, confidence or ascendency, or a combination of any of these. But if an explanation is called for, it parallels that with the defendant's signature of the promissory notes. In the months following the signing of the promissory notes the defendant regularly undertook to make payment for the claimants, through the various ruses described earlier, some of which involved using his assets or assets he said he would personally obtain. As well as giving the claimants additional security that they would finally be paid their legal fees, the FCA was to the defendant's benefit in his quest to protect his father's interests. Whatever his intentions once the FCA was signed, it constituted a settlement of the claimants' outstanding claims, with the benefit of a discount of about a third, negotiated down from the claimants' original offer of 15 percent, and an extension of the payment period from 30 to 60 days. There is force in Mr D'Cruz's submission that, against the background of the defendant's assertion that these concessions were of little or no consequence for him, since he had no intention of paying, it was he taking advantage of the claimants, not the other way around.

194. The FCA offered a firm undertaking from the defendant himself. But there is also the reality that the defendant's interests and those of his father, his family and the Saad businesses were intertwined. As Mr D'Cruz put it, the FCA conferred a significant benefit on Mr Al-Sanea Snr by the reduction in the debts, which was itself a benefit to Mr Mishal Al-Sanea, who was working as the leading figure in and intended successor to his father's and family's companies as effective director of Saad Trading and as director and co-owner of the Saad Hospital. In other words, the defendant's fortunes were bound up with those of his father, his family and the Saad businesses, and any reduction in their debts would also benefit him.

Unconscionable transactions

195. In my view the defendant's submission about unconscionability is unsuccessful. In no way can Mr Mishal Al-Sanea be categorised as being in the position of weakness or serious disadvantage vis-à-vis the claimants as required by the authorities. He was well-educated, came from what had been a hugely wealthy family, and was experienced in business, trusted by his father to manage Saad Trading under a power of attorney, and to be a director and shareholder of the Saad Hospital. That his father, his family and the Saad Group were under the strain of a business collapse did not make him vulnerable

when he signed the promissory notes on 4 April 2017 and the FCA later that year on 29 November 2017.

196. In any event, as I have found, the claimants were not involved in unconscionable conduct in exerting pressure on Mr Mishal Al-Sanea to obtain payment of their fees and finally ceasing to act (after many warnings) when after several years they had not been paid. Nor are the terms of the promissory notes or FCA objectionable especially when his father had agreed to give promissory notes as security for payment of the claimants' fees (pursuant to the October 2016 agreement), and the FCA settled (at a substantial discount) the outstanding indebtedness of his father and the Saad business as regards the claimants' fees. The threats and the "pressure, pressure, pressure" which Mr Aldridge majored on are nowhere near the extremely limited circumstances of unconscionable conduct. Rather, the threats about ceasing to act as lawyers to the defendant, his family and the Saad businesses, bringing proceedings in JDEK to claim their fees and to enforce the promissory notes and even applying for a travel ban amounted to lawful conduct.

D. RELATIONSHIP BETWEEN THE PROMISSORY NOTES AND FCA

197. The defendant contended that the wording of the preamble of the FCA means that his payment obligations under it turn on the promissory notes being enforceable. Since for the reasons given the promissory notes are enforceable the issue does not arise. In any event the preamble does not have this effect. In my judgment that wording makes plain that the defendant is pledging to pay the debts of his father, not to discharge obligations arising under the promissory notes. As Mr D'Cruz put it, reference to the promissory notes in the preamble simply recorded an historic step which the defendant took to honour his pledge to pay his father's debts. In other words, the defendant's payment obligations under the FCA do not depend on whether the notes are payable or enforceable. The defendant's additional suggestion that such a term can be implied into the FCA is bound to fail, because that would contradict the express terms of the preamble.

198. So, too, is the submission that the FCA is a contract of guarantee, with the defendant only being liable under it if Saad Trading and the Saad Hospital are themselves liable under the promissory notes. Clause 6 makes clear that the defendant is undertaking a primary liability to pay by instalments, as the preamble puts it, in settlement of the outstanding debts. This is not a secondary liability: the defendant is undertaking to pay a new liability in an amount of some two thirds of the original indebtedness.

E. CLAUSE 4 OF FCA

199. The null and void aspect of clause 4 of the FCA has already been mentioned. The defendant's case was that the meaning of clause 4 was plain, conferring an option on him of paying the amounts set out in the FCA, and thereby discharging the debts due by the original debtors (Saad Trading and Saad Hospital) for a lesser amount, but if he did not take advantage of this option the FCA was "null and void" and the claimants were entitled to pursue Saad Trading and Saad Hospital for the full amount. On the defendant's case this was consistent with what he was told before signing the FCA and with what Dr Al-Subaihi had messaged him on 18 February 2018, quoted earlier in the judgment.

200. Mr Aldridge further contended that Clause 4 could not be unilaterally waived by the claimants. It was not inserted for the sole benefit of the claimants but was expressed in the form of an option to be exercised by him, or at least for the mutual benefit of both parties. Since the defendant was exercising an option, there was no breach of contract so the doctrine that a party cannot take advantage of its own wrong had no application to clause 4. Even if there was a breach by the defendant, Mr Aldridge continued, the principle relied upon by the claimants was a principle of construction, and therefore could not be used to override the clear wording of the contract. Since the defendant had not paid the reduced amount provided for under the FCA, it was null and void.

201. In my view clause 4 cannot be read as giving the defendant the option of choosing whether to pay under the FCA or not. The clause is not expressed in that way, nor is clause 6 under which the defendant pledged to pay the amounts in accordance with the timetable set out there. Rather, as the claimants submitted, clause 4 must be construed in accordance with what Lord Diplock said in *Cheall v Association of Professional, Executive, Clerical and Computer Staff* [1983] 2 AC 180 was the well-known rule of construction that "it is to be presumed that it was not the intention of the parties that either party should be entitled to rely upon his own breaches of his primary obligations as bringing the contract to an end": at 189.

202. In this case the defendant undertook to pay at a one third discount the amount owed the claimants in settlement, in accordance with the schedule set out in clause 6. In breach of that he failed to pay so cannot rely on his own breach to terminate the FCA and extinguish his own liability. Rather, the claimants had the option to terminate the FCA if they wanted but have chosen not to do so. The agreement is not "null and void". Clauses which provide that a contract is void upon the occurrence of an event have been construed to mean that they are voidable at the option of the innocent party, so that the party in breach cannot take advantage of their own wrongdoing: *Davenport v The Queen* (1877) 3 App Cas 115, 129 (PC); *Quesnel Forks Gold Mining Co Ltd v Ward* [1920] AC 222, 226-7 (PC); *Python (Monty) Pictures Ltd v Paragon Entertainment Corp* [1998] EMLR 640, 683. As to what Mr Mishal Al-Sanea claims he was told or understood before signing the FCA (which I have rejected), or how he interpreted Dr Al-Subaihi's message of 18 February 2018, this can have no bearing on the construction of clause 4. The issue is how the FCA is interpreted objectively as it would be understood by a reasonable person, disregarding subjective evidence of any party's intentions*: Arnold v Britton* [2015] UKSC 36, [2015] AC 1619, [15(vi)].

F. AMENDMENT APPLICATION AND RELATED MATTERS

203. During the trial, Mr Aldridge for Mr Mishal Al-Sanea applied to re-amend the Amended Defence. (This followed a recent amendment to the Defence on 21 June 2021.) Two re-amendments were proposed: (i) to plead the allegation of threats to sue Mr Al-Sanea Snr for fees and then to enforce the promissory notes at JDEK, with its extensive powers; and (ii) to allege that the Saad Hospital, was a client of the claimants, in addition to Saad Trading and Mr Al-Sanea Snr, to whom the claimants owed fiduciary duties.

204. In *Nesbit Law Group LLP v Acaste European Insurance Company Ltd* [2018] EWCA Civ 268, the Court of Appeal approved a synthesis of the authorities on the discretion

to allow late amendments stated by Carr J in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 758 (Comm), [36]-[38]. Sir Geoffrey Vos C said:

> "[41] In essence, the court must, taking account of the overriding objective, balance the injustice to the party seeking to amend if it is refused permission, against the need for finality in litigation and the injustice to the other parties and other litigants, if the amendment is permitted. There is a heavy burden on the party seeking a late amendment to justify the lateness of the application and to show the strength of the new case and why justice requires him to be able to pursue it."

205. Mr Aldridge submitted that there was no prejudice to the claimants with either amendment and that they should be allowed so that the full dispute between the parties can be justly decided. The claimants had notice of the first point at various places in the defendant's witness statement. Further, in his oral evidence the first claimant agreed that the claimants would bring proceedings in JDEK if their fees were not paid, but that he did not need to tell the defendant of the consequences of that because they were obvious. In addition, Mr Aldridge submitted, the first claimant agreed in his oral evidence that the Saad Hospital was a client, and there was documentary evidence to this effect.

206. Quite apart from other considerations, the proposed amendment must fail since it has no prospect of success. As explained in the judgment the pressure and threats for which the claimants were responsible, including those relating to enforcing the promissory notes in JDEK, are not in breach of fiduciary duty and do not constitute the exercise of duress, undue influence, or unconscionable conduct. Nor are JDEK's so-called draconian powers legally relevant in this regard. As to the position of Saad Hospital, although Dr Al-Subaihi did give occasional advice in relation to its activities, it is not a party to the 2010 and 2013 retainer agreements or the October 2016 agreement. There is no evidence that it was a client in relation to work for which fees are claimed in these proceedings.

207. Mr Aldridge raised a separate issue about the claimants' pleading. He contended that the claimants had not pleaded the point that they were no longer acting for Mr Mishal Al-Sanea when the FCA was entered, relevant to one of their arguments about not owing him fiduciary duties. If an amendment were allowed at this stage, he submitted, there would be severe prejudice to the defence because, for example, if the point had been run earlier expert evidence might have been adduced of KSA law on the effect of the power of attorney between the parties.

208. There is some difficulty with this last suggestion, given the parties acceptance that the dispute is to be settled according to the principles of English law. At any rate I accept Mr D'Cruz's submission that in their Reply the claimants denied the existence of any fiduciary duties owed by the claimants, so that it became the task of the defendant to prove that a fiduciary relationship existed on the facts of the case. One such fact was that claimants ceased acting for Mr Al-Sanea Snr and the Saad businesses in July 2017. As regards that, the claimants were entitled to raise points in response to Mr Mishal Al-Sanea's position about this.

V CONCLUSION

209. For the reasons given there must be judgment for the claimants.